TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 869.

LOW WAH SUEY AND LI A. SIM (Mrs. LOW WAH SUEY), APPELLANTS,

vs.

SAMUEL W. BACKUS, COMMISSIONER OF IMMIGRATION, PORT OF SAN FRANCISCO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED NOVEMBER 20, 1911.

(22,945)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 19, 1911.

a In the District Court of the United States in and for the Northern District of California.

No. 15,197.

In the Matter of the Application of Low Wah Suey for a Writ of Habeas Corpus for and on Behalf of Li A. Sim, His Wife.

1 In the United States District Court in and for the Northern District of California.

No. 15,197.

In the Matter of the Application of Low Wah Suey for a Writ of Habeas Corpus for and on Behalf of Li A. Sim, His Wife.

Petition for a Writ of Habeas Corpus.

To Honorable John J. De Haven, Judge of the United States District Court in and for the Northern District of California:

The Petition of Low Wah Suey, respectfully shows:

I.

That Petitioner is a resident of the City and County of San Francisco, State of California, in the Northern District of California, that he was born in the United States of parents regularly domiciled therein and he is a citizen of the United States and of the State of California.

II.

That on or about the 10th day of March, 1910, the said Low Wah Suey, this Petitioner, and said Li A. Sim, the person for whom and in whose behalf this Petition is made, intermarried in the British *Providence* of Hong Kong, and that ever since the said last mentioned date Petitioner and the said Li A. Sim, have been and they now are husband and wife.

III.

That subsequent to the said marriage of this Petitioner and said Li A. Sim, to-wit, on or about the 15th day of September,
2 1910, Petitioner with his said Wife Li A. Sim, lawfully *entitled* the United States of America and ever since said last mentioned date and until the commencement of the unlawful imprisonment, detention and restraint hereinafter complained of, they were continuously living and cohabiting together as husband and wife, and had a son, Low Sang, born to them on February 9th, 1911, at their home and abode in the State of California.

IV.

That said Li A. Sim, is the lawful wife of the Petitioner, and said Petitioner is a citizen of the United States of America, and a citizen of the State of California, and that she, the said Li A. Sim, is a regularly domiciled resident, denizen and inhabitant of the State of California, and of the United States of America, and up to the said unlawful detention restraint and imprisonment hereinafter mentioned, domiciled and living with her said Husband at their mutual home therein and that she has no home, abode or domicile elsewhere.

V.

That the said Li A. Sim, the person for whom and on whose behalf this Petition is made, on March 10th, 1910, married as aforesaid, the said Petitioner, Low Wah Suey, who was then and there a citizen of the State of California, as aforesaid, and that she, the said Li A. Sim, by reason of said marriage did then and there become and ever since said last mentioned date she has been and she now is a citizen of the State of California.

VI.

That the said Li A. Sim, is unlawfully imprisoned, restrained confined and detained of her liberty by Honorable Samuel W. Backus, Commissioner of Immigration, at the Port of San Francisco,
3 and is about to be taken from the care, comfort and support of her said husband, from the love, affection and care of her said son Low Sang, from her domicile in the State of California, and from her domicile in the United States of America, and sent against her will to the Empire of China of which she is not a subject and where she has no domicile, abode or home.

That the illegality of such imprisonment, restraint, confinement and detention consists in this, to-wit:

That the said Samuel W. Backus, Commissioner of Immigration at the Port of San Francisco, as aforesaid, claims to have the legal right to and he does hold the said Li A. Sim, in imprisonment and detention and he claims the right and is about to deport and banish her from the State of California, and from the United States as aforesaid, by virtue and under the authority of a Warrant of Deportation directing him to so deport and banish her, which said Warrant was issued by the Secretary of Commerce and Labor, under and by virtue of the Laws of the United States made and promulgated to regulate and to provide for the deportation of certain alien persons, to-wit, under the authority of the Immigration Act of February 20th, 1907 as amended by the Act of Congress approved March 26th, 1910.

That the said Secretary of Commerce and Labor has and had no lawful authority to so deport or banish the said Li A. Sim from the United States for the following reasons, to-wit,

First. For the reason that said Li A. Sim is and was, at and prior to the time said Warrant of Deportation was issued, a regularly domiciled resident, denizen and inhabitant of the United States and the wife of a citizen of the United States, living and dwelling and domi-

ciled therein with him at their mutual abode and domicile and cohabiting there with him as his lawful wife, and at their said
4 abode she bore to her said husband, a son, Low Sang, who is also a citizen of the United States, and of the State of California, which facts were conclusively shown at the hearing hereinafter mentioned, and she is not subject to the Provisions of said laws and said Acts and is not subject to the jurisdiction of the Secretary of Commerce and Labor nor to the jurisdiction of the Commissioner of Immigration at the Port of San Francisco, nor to the jurisdiction of any officer, board or department of the Immigration service of the executive branch of the United States Government.

Second. For the reason that she is and was at and prior to the time said Warrant of Deportation was issued, a regularly domiciled, resident, denizen and inhabitant of the State of California, and the lawful wife of a citizen thereof, and mother of an infant son, Low Sang, who is also a citizen thereof, and who is in constant need of her love, care, and attention, living and dwelling therein with her said husband and her said son at their mutual abode and domicile and cohabiting there with your Petitioner as his lawful wife, which facts were conclusively shown at the hearing hereinafter mentioned, and she is not subject to the provisions of the said Laws and said Acts and is not subject to the jurisdiction of the Secretary of Commerce and Labor or the Commissioner of Immigration as aforesaid.

Third. For the reason that the said Li A. Sim, is a citizen of the State of California, and is not subject to the provisions of the said Laws or Acts and is not subject to the Jurisdiction of the said Secretary of Commerce and Labor or the jurisdiction of the said Commissioner of Immigration as aforesaid.

Fourth. For the reason that, before the said Warrant of
5 deportation was issued against her as aforesaid the said Li A. Sim was denied by the said Secretary of Commerce and Labor and by the Immigration Officers at the Port of San Francisco, the fair hearing in good faith guaranteed her by law and in that behalf Petitioner alleges on his information and belief, as follows:

Fourth. *a*. That the said Li A. Sim was refused the right to be represented by Counsel during all stages, to-wit, at certain stages of the proceedings which were had against her by the Immigration authorities of the United States and upon which said proceedings said Warrant of Deportation was issued, in this that she was examined without the presence of her Counsel and against her will by a-Immigration Officer at the Port of San Francisco, at or about the time said Li A. Sim was first taken into custody by the Immigration Officers at the said Port, to-wit, on or about the 27th day of January, 1911, and in this further that on or about the 31st day of January, 1911, at the office of the Commissioner of Immigration at Angel Island, California, before said detained had been advised of her right to Counsel and before she was given the opportunity of securing bail, and after Counsel had been employed on her behalf, an examination was conducted by Immigrant Inspector J. X. Strand, acting under the Orders of the Commissioner of Immigration for the Port of San Francisco, during which examination the said detained

was questioned by said Immigration Inspector against her will and without the presence of Her Counsel, who was refused permission to be present at said hearing.

That the questions so put at said examination and the answers which were then and there made by said detained were incorporated into the record which was submitted to said Secretary and
6 upon which the said Warrant of Deportation was issued, all of which was done against the objection of Counsel for detained made and entered in the record both prior thereto and also at a subsequent date to the dates of such examinations.

Fourth. *b*. That at certain stages of the said proceedings, upon which said Warrant of Deportation was issued the said Li A. Sim, while she was being restrained of her liberty by the said Commissioner of Immigration, was refused the right or opportunity to consult with her Counsel, in the manner following: to-wit, on or about the 28th, 30th, and part of the 31st, days of January, 1911, George A. McGowan, Counsel for said detained, who has been and at all time was the Attorney of record for said detained, was refused by said Commissioner of Immigration the right and opportunity of consulting with said Detained person.

Fourth. *c*. That during the conduct of said proceedings and hearings said Secretary of Commerce and Labor and said Commissioner of Immigration exercised judicial power but refused to take any steps to direct, or if necessary, enforce the attendance of a material witness to testify on behalf of said detained person, although requested by Counsel so to do, although said Immigration Officers did use their said powers to produce witnesses to testify against the said Li A. Sim, That had the said witness whose attendance was so specifically requested and without the benefit of whose testimony she could not safely submit or conclude her case, been produced as the witnesses for the Government were produced, then and in that event your Petitioner alleges on information and belief, there would have been testimony in the record which would doubtlessly have
7 restrained the said Secretary from issuing said Warrant of Deportation, and the said detained was thus arbitrarily and unlawfully prevented from having the benefit of said testimony.

That the said Li A. Sim, has exhausted all her rights and remedies before the Department of Commerce and Labor, of the United States and that the said Warrant of Deportation is the final Judgment of the said Department and there is no appeal therefrom provided by law; That unless the Writ of Habeas Corpus issued as prayed for herein out of this Court directed to the said Hon. Samuel W. Backus, Commissioner of Immigration at the Port of San Francisco, to whom the said Warrant of Deportation was issued and in whose custody the body of the said Li A. Sim, now is, the said Li A. Sim, will forthwith be deported from the United States to the Empire of China.

Fourth. *c*. Your Petitioner further alleges upon information and belief that the said Officers further acted in bad faith, arbitrarily and illegally in said pretended trial, hearing or hearings in receiving, in evidence, over objection hearsay testimony detrimental to

the said Li A. Sim, and refusing to cause to be furnished the name of the person making such alleged statements so that in that manner the said Li A. Sim was prevented and deprived by said Officers of adequate opportunity to offset said hearsay evidence or disproving the same.

Fourth. *e*. Your Petitioner further alleges upon information and belief, that the said Officers further acted in bad faith, arbitrarily and illegally, in said pretended hearing or hearings in receiv-
8 ing and considering in evidence a report under date of Jan. 31st, 1911, based on hearsay information in which the name of the informer, was withheld thus preventing and depriving Li A. Sim, of any adequate opportunity to offset said hearsay evidence or disprove the same and though the hearings in said case at which the Government took testimony commenced with the pretended arraignment on January 30th, 1911, and ended on June 21st, 1911, no witnesses were offered to support the main and special features of said report, though were its contents true ample time was offered the Government to produce its witnesses to prove them and notwithstanding that they did not do so, and in not doing so, should in all fairness and good faith be considered as withdrawing same, the said Officers did consider and act upon said Report to the great deterriment and damage of your Petitioner, his said wife and their said son, who were thus prevented in this way from meeting the issues raised in this said hearsay report in which the name of the informer is withheld nor did said officers even offer the author of the said hearsay report as a witness for the Government, notwithstanding the fact that he was available to be so called by them at any of the times herein mentioned.

Fourth. *f*. Your petitioner alleges upon information and belief that the said pretended hearing or hearings before the said Secretary of Commerce and Labor were in fact no hearing upon the merits of the case either before the Secretary of Commerce and Labor or any acting Secretary of Commerce and Labor or any Assistant Secretary of Commerce and Labor, and further that a hearing thereon before any officer whose duty it is made by statute or regulation to finally hear and determine said matter was denied to the said
9 Li A. Sim, which as your petitioner allege- was illegal and in bad faith toward the said Li A. Sim.

Fourth. *g*. That the Commissioner General of Immigration under the direction of, or with the approval of the Secretary of Commerce and Labor, is authorized under said statute to establish such rules, and regulations not inconsistent with law as he shall deem best calculated for carrying out the provisions of said Act, and for the protection of the United States, and for the protection of the aliens migrating thereto from fraud and loss, and that in furtherance of the power so conferred, the said official has issued certain rules and regulations which it is claimed by said Official were issued under the authority hereinabove recited, and in this connection your Petitioner alleged upon information and belief that certain of said rules, to-wit, Rule 35 sub-division "B"—"E" and "H" thereof of the said Rules and Regulations promulgated upon May 4th, 1911, were ille-

gally issued and issued without authority and in breach of trust of said Officials, in this that said Rules are unreasonable and unjust and contrary and inconsistant with law, and further that they do not protect the alien immigrants migrating to the United States from fraud and loss, and that for this reason your Petitioner alleges that the part of the regulations so enumerated above constitute an abuse of discretion and were and are illegally acted upon by the said Officials above mentioned.

h. Your Petitioner alleges upon information and belief, that the proceedings, the pretended hearing or hearings as a result of which the said Warrant of Deportation was made by the Secretary of Commerce and Labor, the said Secretary and the said Officers who
10 conducted said pretended hearing or hearings acted illegally and without authority and with bad faith and committed numerous breaches of trust toward your Petitioner in denying to Li A. Sim the fair hearing and trial in good faith contemplated by the said statute and according instead thereof nothing but the semblance of a hearing and trial in which the discretion vested in said officers was grossly abused to the great damage and prejudice of Li A. Sim, for it was shown conclusively by an overwhelming weight of evidence that the said Li A. Sim was not an objectionable alien as alleged in said Warrant, and further that there was no evidence produced from which it could fairly, honestly, justly, legitimately or at all be established that she was such an objectionable alien as charged and that in so finding the said officers and each and all of them abused the discretion vested in them in violation of said statutes and said rules and regulations.

VIII.

That your Petitioner alleges that the said Li A. Sim, is not now, and has not been at any time since her entry into the United States, such an undesirable alien person as is charged in said Warrant, and that since her entry into the United States, as aforesaid she has lived with your Petitioner as his wife, and has followed no other occupation of avocation than as housewife to your Petitioner and that the above facts were conclusively shown at said hearing.

IX.

That your Petitioner does not attach to this Petition a copy of the entire proceedings had before the Immigration Officers at the Port of San Francisco in this matter and the record of said proceeding all of which are herein referred to and concerning which said Warrant of Deportation proceedings, and record certain allega-
11 tions of unfairness and otherwise have been made herein for the following reasons:

(1) That the aforesaid record is too voluminous to make part of this Petition; that it consists of many folios of testimony and other documentary evidence and matters of record no part of which could be coherently or clearly stated herein separ-tely and that to incor-

porate a copy of the entire proceedings, record and Warrant would burden this Petition and cloud the issue.

(2) That your Petitioner has not in his possession the entire record of the proceedings and that he is unable to secure the same in time to file with this Petition.

(3) That the said Commissioner of Immigration, Samuel W. Backus, has a copy of the said record in the files in his Office and can produce the same with the body of the said Li A. Sim.

Copy Warrant of Deportation hereunto annexed marked Exhibit "A."

And for a further, several and separate reason for the prayer to this Petitioner the Petitioner sets up on his own behalf and upon behalf of Low Sang his infant son.

I.

Petitioner on his own behalf and on behalf of his said infant son, alleges and re-alleges each and every all and singular the allegations contained and stated in paragraphs I, II, III, IV, and V, of the first portion of the Petition made on behalf of his wife the said Li A. Sim.

II.

That the said imprisonment, detention, confinement and
12 restraint of the said Li A. Sim, is without authority of law in this to-wit:

(1) That the said Secretary of Commerce and Labor, has exercised judicial power and has deprived Li A. Sim of her liberty and is about to deport and banish her from her home and from the home of her husband, the said Low Wah Suey, this Petitioner, and from Low Sang, her said infant son, and from the society, protection and comfort of her said husband, and said Son, Citizens of the United States in direct violation of the provisions of Section 1 Article III of the Constitution of the United States.

(2) That the said Secretary of Commerce and Labor, and his said certain subordinate officers, all of whom are executive Officers, have exercised judicial power in violation of the Constitution of the United States, and it is by them proposed to forcibly and unlawfully take the said Li A. Sim from her husband, Low Wah Suey, and her son, Low Sang, both of whom are complainants herein, and to deprive them, the said Low Wah Suey, and the said Low Sang, both of whom are conceded and admitted to be citizens of the United States, of the society respectively of the wife of one and the mother of the other, and seek to deprive forever the said Low Wah Suey and the said Low Sang, of their rights as citizens of the United States to the comforts and privileges of the society of respectively the wife of the one and the mother of the other, and the comforts and privileges of the marriage relation existing between the said Low Wah Suey and the said Li A. Sim, and the comforts and privileges of the relation of mother and child which exist between Li A. Sim and Low Sang, at their mutual domicile and home in the State

of California, in the United States, and is further about to
13 deport and banish the said Li A. Sim from the said abode and home of the said Low Wah Suey her husband, and Low Sang, her son forever, and if said Li A. Sim was so deported and banished from the United States, as directed in said Warrant the said Li A. Sim would be, under the said General Immigration law guilty of a misdemeanor if she should ever thereafter attempt to return to the domicile of her said husband and her said son in the United States, and further that if the said Low Wah Suey and the said Low Sang — ever attempt to exercise their rights to the society, comfort of, or to the privileges of the said family relation existing between them and the said Li A. Sim, at their home and abode in the United States of America, and in the State of California, that they, your Petitioner and his said son would be committing a misdemeanor in conspiring to violate the laws of the United States, in so attempting to exercise their natural rights. Therefore does your Petitioner, Low Wah Suey, allege and aver that the inalienable and natural rights and privileges of himself and his said son, have been invaded in violation of the Constitution of the United States in this matter, without having made your said Petitioner Low Wah Suey, and his said son, Low Sang, parties to the said pretended hearing or hearings, as a result of said pretended hearing or hearings, it is intended to deport and banish the said Li A. Sim from the United States as set forth in the said Warrant of Deportation, all of which is in violation of Articles IV-V-VI-VIII-IX in Amendment to the Constitution of the United States.

III.

Petitioner alleges and re-alleges each and every, all and singular,
14 the allegations stated in paragraph- VII. VIII and IX, of the first portion of this Petition made on behalf of the said Li A. Sim, his wife.

IV.

That irrespective of any of the allegations of this Petition, this Petitioner, Low Wah Suey, is a citizen of the United States, and said Li A. Sim is his lawful wife, and the said Low Sang, is their infant son and a citizen of the United States, and he the — Low Wah Suey is entitled to the company and society of his said wife at his abode within the United States or elsewhere and the said Low Sang is entitled to the company, society, support, guidance, love and protection of his mother and the Secretary of Commerce and Labor of the United States is without jurisdiction to remove or keep the said Li A. Sim from the company and society of this Petitioner and their said infant son.

Wherefore, your Petitioner prays that a Writ of Habeas Corpus be issued by this Honorable Court commanding the said Samuel W. Backus, Commissioner of Immigration at the Port of San Francisco, to have and produce the body of the said Li A. Sim before this Honorable Court at its Court room in the City and County of San Francisco, in the Northern District of California, at the opening of

Court on a day certain, in order that the alleged cause of imprisonment, and restraint of the said Li A. Sim and the legality or the illegality thereof may be inquired into; and in Order that, in case of such imprisonment and restraint be found to be unlawful and illegal, the said Li A. Sim may be admitted to just and reasonable bail pending all proceedings herein, and that the said Li A. Sim may be discharged from all custody and restraint and be released without day.

Dated, the 14th day of Sept. A. D. 1911.

GEO. A. McGOWAN,
Attorney for Petitioner.

UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco, ss:

Low Wah Suey, being duly sworn deposes and says:

That he is the Petitioner named in the foregoing Petition; that the same has been read and explained to him and he knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief and as to those matters he believes it to be true.

LOW WAH SUEY.

Subscribed and sworn to before me this 14th day of Sept. A. D. 1911.

[SEAL.]

M. T. SCOTT,
Deputy Clerk, U. S. District Court,
Northern District of California.

EXHIBIT "A."

"Bureau of Immigration and Naturalization.

Form 8B.

Warrant—Deportation of Alien.

UNITED STATES OF AMERICA,
DEPARTMENT OF COMMERCE AND LABOR.
WASHINGTON.

No. 53,155-58-B.

To Luther C. Stewart, Acting Commissioner of Immigration, San Francisco, Cal.:

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector Charles D. Mayer, held at San Francisco, California, I have become satisfied that the alien Lee Sim alias Li A. Sim alias Le Sim, who landed at the Port of San Francisco, California, ex s. s. "Manchuria," on the 15th day of April, 1910, has been found in the United States in violation of the Act of Congress ap-

proved February 20, 1907, amended by the Act approved March 26, 1910, to-wit:

That the said alien has been found an inmate of a house of prostitution subsequent to her entry into the United States and may be deported in accordance therewith:

I, Benj. S. Cable, Acting Secretary of Commerce and Labor by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to the Country whence she came, at the expense of the steamship Company importing her.

17 For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 4th day of August, 1911.

[OFFICIAL SEAL.] BENJ. S. CABLE,
Acting Secretary of Commerce and Labor.

Mal.
Inclosure No. 3721."

Service of the within Petition for a Writ of Habeas Corpus and receipt of a copy thereof hereby admitted this 14th day of September A. D. 1911.

ROBT. T. DEVLIN,
United States Attorney Representing Commissioner of Immigration for the Port of San Francisco.

(Endorsed:) Petition for a Writ of Habeas Corpus. Filed Sep. 14, 1911. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk.

18 In the District Court of the United States in and for the Northern District of California.

No. —.

In the Matter of the Application of LOW WAH SUEY for a Writ of Habeas Corpus for and on Behalf of LI A. SIM, His Wife.

Order to Show Cause.

Good cause appearing therefor, and upon reading the verified petition on file herein, It Is Hereby Ordered that the said Samuel W. Backus, Commissioner of Immigration for the Port of San Francisco, appear before this Court on the 15th day of Sept., 1911, at the hour of 10 o'clock A. M. of said day to show cause, if any he has, why a Writ of Habeas Corpus should not issue herein as prayed for, and that a copy of this Order and of said Petition be served upon the said Acting Commissioner, and it is further Ordered that the said Samuel W. Backus, Commissioner of Immigration as aforesaid, or whosoever acting under the orders of the said Commissioner, shall have the custody of the said Li A. Sim, are hereby ordered and directed to retain the said Li A. Sim, within the custody of the said

Commissioner of Immigration and within the jurisdiction of this Court until its further Order herein.

Dated, San Francisco, Cal. Sept. 14th, A. D. 1911.

JOHN J. DE HAVEN,
United States District Judge.

19 Service of the within Order and receipt of a copy thereof, is hereby admitted this 14th day of September, A. D. 1911.

ROBT. T. DEVLIN,
United States Attorney,
By E. H. PIER,
Ass't U. S. Att'y.

(Endorsed:) Order to show Cause. Filed, Sep. 14, 1911. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

20 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of LOW WAH SUEY for a Writ of Habeas Corpus for and on Behalf of LI AH SIM, His Wife.

Demurrer.

Now comes Samuel W. Backus, Commissioner of Immigration at the Port of San Francisco, State and Northern District of California, and demurs to the Petition for a Writ of Habeas Corpus in the above entitled matter, and for grounds of demurrer alleges:

That the said Petition does not state facts sufficient to justify this Court in issuing a Writ of Habeas Corpus in this:

1st. That the facts set forth herein do not in any way show an abuse of discretion of the Immigration Officials in the proceeding under which the said Li Ah Sim has been Ordered deported.

2nd. That it appears from said Petition that said Li Ah Sim is a person subject to the Immigration laws of the United States, and as such, upon proper proceedings before the Immigration Officials, is liable to deportation.

ROBT. T. DEVLIN,
United States Attorney, Attorney for Respondent.

21 Service of the within Demurrer and receipt of a copy thereof is hereby admitted this 14th day of Sept. A. D. 1911.

GEO. A. McGOWAN,
Att'y for Petitioner.

(Endorsed:) Demurrer to Petition. Filed, Sep. 14, 1911. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

22 At a stated term of the District Court of the United States of America, for the Northern District of California, held at the Court-room thereof, in the City and County of San Francisco, on Monday the 18th day of September, in the year of our Lord one thousand nine hundred and eleven.

Present: The Honorable John J. De Haven, Judge.

#15,197.

In re LI A. SIM on Habeas Corpus.

(Order of Court Sustaining Demurrer to Petition for Writ and Order Denying Writ.)

The Demurrer to the Petition for a Writ of Habeas Corpus herein, having been heretofore submitted to the Court for decision, now after due consideration had thereon, by the Court Ordered that said Demurrer be, and the same is hereby sustained.

Further Ordered that the Petition for the Writ be, and the same is hereby denied.

Further Ordered that the Commissioner of Immigration at the Port of San Francisco, be, and he is hereby directed to retain the custody of the detained, in whose behalf a Writ of Habeas Corpus is prayed for, a period of five days from this date, to enable petitioner herein to take an appeal from the Order here made if so advised.

23 In the United States District Court in and for the Northern District of California.

#15,197.

In the Matter of the Application of LOW WAH SUEY for a Writ of Habeas Corpus for and on Behalf of LI A. SIM, His Wife.

Notice of Appeal (etc.)

To the Clerk of said Court and to the Honorable Robert T. Devlin, Esq., United States Attorney for the Northern District of California:

You and each of you will please take notice that the Petitioner above named, Low Wah Suey, and Li A. Sim, the person upon whose behalf said Petition was filed, do each of them hereby appeal to the Supreme Court of the United States from the Order made and entered herein on the 18th day of September, 1911, sustaining the Demurrer to said Petition and denying the Petition for a Writ of Habeas Corpus filed herein.

Dated, San Francisco, Cal. September 18th, 1911.

GEO. A. McGOWAN,

Attorney for Petitioner and Appellants.

24 In the United States District Court in and for the Northern District of California.

#15,197.

In the Matter of the Application of LOW WAH SUEY for a Writ of Habeas Corpus for an- on Behalf of LI A. SIM, His Wife.

Petition for Appeal.

Comes now Low Wah Suey, the Petitioner herein, and Li A. Sim, his Wife, the person upon whose behalf said Petition is filed, appellants herein, and say:

That on the 18th day of September, A. D. 1911, the above entitled Court made and entered its Order sustaining the Demurrer on file herein and denying the Petition for a Writ of Habeas Corpus as prayed for on file herein, in which said Order in the above entitled cause certain errors were made to the prejudice of these Appellants all of which will appear more in detail from the Assignment of Errors which is filed herewith.

Wherefore, these Appellants pray that an Appeal may be granted in their behalf to the Supreme Court of the United States, for the correction of the errors so complained of and further that a Transcript of the record, proceedings and papers in the above entitled cause, duly authenticated, may be sent and transmitted to the said Supreme Court of the United States.

Dated, San Francisco, Cal. September 18th, A. D. 1911.

GEO. A. McGOWAN,
Attorney for Low Wah Suey and
Li A. Sim, Appellants Herein.

25 In the United States District Court in and for the Northern District of California.

No. 15,197.

In the Matter of the Application of LOW WAH SUEY for a Writ of Habeas Corpus for and on Behalf of LI A. SIM, His Wife.

Assignment of Errors.

Comes now Low Wah Suey, the Petitioner herein, and Li A. Sim, his wife, the person upon whose behalf the Petition for a Writ of Habeas Corpus herein was filed, Appellants herein by their Attorney Geo. A. McGowan, Esq., and in connection with their Petition for an Appeal herein, assign the following errors, which they aver occurred upon the hearing accorded in the above entitled cause, and upon which they will rely upon appeal to the Supreme Court of the United States, to-wit:

First. That the Court erred in sustaining the Demurrer to the

Petition for a Writ of Habeas Corpus, and in denying the Petition for a Writ of Habeas Corpus, and in not taking jurisdiction thereof when it affirmatively appears from said Petition that the detained was and is the Wife of a citizen of the United States, and also the mother of an infant male citizen of the United States, and that the detained was and is a regularly domiciled resident, inhabitant and denizen of the United States, and of the State of California, living therein with her husband and her said son, and having no home elsewhere, and that the said detained by virtue of her said marriage thereby became, and ever since has been a citizen of the sover-
26 eign State of California, and as such citizen, denizen, inhabitant and resident of the State of California, and as such mother of an infant citizen of the United States who needs her constant care and attention was not and is not subject to the operation of the General Immigration laws of the United States, and was not and is not subject to the jurisdiction of the Secretary of Commerce and Labor, or the Commissioner of Immigration at the Port of San Francisco.

Second. That the Court erred in sustaining the Demurrer to the Petition for a Writ of Habeas Corpus, and in denying the Petition for a Writ of Habeas Corpus, and in not taking jurisdiction thereof, when it affirmatively appears from said Petition that the husband of the said detained was the petitioner therein in his own right as the husband of the said detained, and also upon behalf of their said infant son, and that he, the said Petitioner was and is a citizen of the United States, as is also their minor son, and prayed in said Petition for the release and discharge from custody of his said Wife, on his own behalf, and on behalf of their said infant son who needs her constant care and attention, he the said Petitioner nor their said minor son had not been made a party to the proceedings had before the Immigration authorities, and further that the said proceeding was not of such a nature or character as afforded the said Petitioner nor their said minor son the benefit of the guarantees contained in the Constitution of the United States.

Third. That the Court erred in holding that the pretended hearing was a fair, full and impartial hearing in good faith when it appeared affirmatively from said Petition that the detained was denied Counsel and the right to consult with Counsel at certain stages of the proceeding against her.

27 Fourth. That the Court erred in sustaining the Demurrer to the Petition for a Writ of Habeas Corpus, and in denying the Petition for a Writ of Habeas Corpus, and in not taking jurisdiction thereof, when it affirmatively appears from said Petition that in promulgating Rule 35 Sub-division- *b*, *c* and *h* of the said Rule, the Secretary of Commerce and Labor, and the Commissioner-General of Immigration exceeded the authority vested in them by law.

Fifth. That the Court erred in sustaining the Demurrer to the Petition for a Writ of Habeas Corpus and *in* not taking jurisdiction thereof, when it affirmatively appears from said Petition that the Secretary of Commerce and Labor, and the Commissioner of Immi-

gration exercised judicial power and refused to use their powers and authority to direct, or if necessary to enforce the attendance of a material witness to testify upon behalf of Li A. Sim, although requested so to do, although said Immigration Officers did, use their said powers and authority to produce witnesses to testify against the said Li A. Sim.

Sixth. That the Court erred in sustaining the Demurrer to the Petition for a Writ of Habeas Corpus, and in not taking jurisdiction thereof, when it affirmatively appears from said Petition that the Secretary of Commerce and Labor, and the Commissioner of Immigration exercised judicial power in violation of the Constitution of the United States.

Seventh. That the Court erred in holding that the action of the Secretary of Commerce and Labor in this matter is not subject to review by the judicial branch of the Government of the United States.

Eight. That the Court erred in sustaining the Demurrer to the Petition for a Writ of Habeas Corpus, and in not taking
28 jurisdiction thereof, when it affirmatively appeared in said Petition that the Secretary of Commerce and Labor and the Commissioner of Immigration had abused the discretion vested in them in issuing said Warrant of deportation upon insufficient evidence and having no evidence at all to support said Warrant of Deportation.

Ninth. That the Court erred in sustaining the Demurrer to the Petition for a Writ of Habeas Corpus, and in denying the Petition for a Writ of Habeas Corpus, and in not taking jurisdiction thereof when it affirmatively appears from said Petition that hearsay testimony was Ordered used against the Petitioner and the name of the informant withheld, and that reports, unsupported by testimony although ample opportunity was afforded the Government to produce its witnesses in support thereof, if it had any, were used against the Petitioner after their virtual abandonment at the said pretended hearing, and that a hearing was refused and denied Petitioner before the Secretary, Acting Secretary or Assistant Secretary of Commerce and Labor.

Tenth. That the Court erred in sustaining the Demurrer to the Petition for a Writ of Habeas Corpus, and in denying the Petition for a Writ of Habeas Corpus, and in not taking jurisdiction thereof when it affirmatively appears from said Petition that Articles IV-V-VI-VIII, and IX in Amendment to the Constitution of the United States have been and were violated.

Wherefore the said Low Wah Suey, and the — Li A. Sim, pray that the Judgment and Order of the said United States District Court, in and for the Northern District of the State of California, made and entered herein in the office of the Clerk of the said Court on the
18th day of September, A. D. 1911, sustaining the Demurrer
29 and denying the Petition for a Writ of Habeas Corpus, be reversed and that this case be remitted to the said Lower Court with instructions to issue the Writ of Habeas Corpus as prayed

for and discharge the said Li A. Sim from custody or grant her a trial upon said Writ.

GEO. A. McGOWAN,
Attorney for Li A. Sim and Low Wah Suey.

Service of the within Notice of and Petition for Appeal and Assignment of Errors and receipt of a copy thereof, is hereby admitted this 20th day of September, A. D. 1911.

ROBT. T. DEVLIN,
United States Attorney.

(Endorsed:) Notice of Appeal, Petition for Appeal and Assignment of Errors. Filed Sept. 21, 1911. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

30 In the United States District Court in and for the Northern District of California.

No. 15,197.

In the Matter of the Application of LOW WAH SUEY for a Writ of Habeas Corpus for and on Behalf of LI A. SIM, His Wife.

Order Allowing Petition for Appeal.

On the 21st day of September, A. D. 1911, came Low Wah Suey, the Petitioner herein, and his wife Li A. Sim, the person upon whose behalf said Petition is filed herein, by their Attorney Geo. A. McGowan, Esq., and filed herein and presented to this Court their Petition praying for the allowance of an Appeal to the Supreme Court of the United States intended to be urged and prosecuted by them, and praying also that a Transcript of the records and papers upon which the Judgment herein was rendered, duly authenticated, may be sent and transmitted to the Supreme Court of the United States, and that such other and further proceeding may be had in the premises as may seem proper. On consideration whereof the Court hereby allows the Appeal hereby prayed for, and that a certified transcript of all the records and all proceedings be prepared and presented by the Clerk of this Court to the Supreme Court of the United States, in the time prescribed by law, and ordered further that the said Li A. Sim shall not be deported under the said Order of deportation, nor removed from the jurisdiction of this Court, pending the hearing of said cause in the Supreme Court of the United States.

31 Dated, San Francisco, Cal. Sept. 25th, A. D. 1911.

JOHN J. DE HAVEN,
United States District Judge.

(Endorsed:) Order allowing Petition for Appeal. Filed Sep. 25, 1911. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

32 In the United States District Court in and for the Northern District of California.

No. 15,197.

In the Matter of the Application of LOW WAH SUEY for a Writ of Habeas Corpus for and on Behalf of LI A. SIM, His Wife.

Admission of Service—Order Allowing Petition for Appeal.

Service of the Order allowing appeal made and entered herein, on the 25th day of September, 1911, and receipt of a copy thereof is hereby admitted.

ROBT. T. DEVLIN,
United States Attorney, Northern District of California.

(Endorsed:) Admission of Service. Order allowing Petition for Appeal. Filed Oct. 5, 1911. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk.

33 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Samuel W. Backus, Commissioner of Immigration, port of San Francisco, and to his attorney, Robert T. Devlin, United States Attorney for the Northern District of California, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California wherein Low Wah Suey and Li A. Sim (Mrs. Low Wah Suey) are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant-, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John J. De Haven, United States District Judge for the Northern District of California this 20th day of October, A. D. 1911.

JOHN J. DE HAVEN,
United States District Judge.

34 Service of the within citation and receipt of a copy thereof is hereby admitted this — day of October, 1911, at San Francisco, Cal.

ROBT. T. DEVLIN,
U. S. Attorney, Attorney for Appellee.

[Endorsed:] No. 15197. Supreme Court of the United States. Low Wah Suey and Li A. Sim (Mrs. Low Wah Suey) Appellants, vs. Samuel W. Backus, Commissioner of Immigration, Port of San Francisco, Appellee. In the Matter of the Application of Low Wah Suey, for a Writ of Habeas Corpus, for and on behalf of Li A. Sim, his wife. Citation on appeal. Filed Oct. 20, 1911. Jas. P. Brown, Clerk, by Francis Krull, Deputy Clerk.

35 *(Citation of Appeal.)*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Samuel W. Backus, Commissioner of Immigration, port of San Francisco, and to his attorney, Robert T. Devlin, United States Attorney for the Northern District of California, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to an Order allowing an Appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Low Wah Suey and Li A. Sim (Mrs. Low Wah Suey), are appellants and you are appellee, to show cause, if any there be, why the Decree rendered against the said Appellant, as in the said Order Allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John J. De Haven, United States District Judge for the Northern District of California, this 20th day of October, A. D. 1911.

JOHN J. DE HAVEN,
United States District Judge.

36 Service of the within Citation and receipt of a copy thereof is hereby admitted this — day of October, 1911, at San Francisco, Cal.

ROBT. T. DEVLIN,
United States Attorney, Attorney for Appellee.

(Endorsed:) Citation on Appeal. Filed Oct. 20, 1911. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

37 *(Bond on Appeal.)*

Know All Men by these Presents: That we, Low Wah Suey, and, Li A. Sim, as principals, and the Illinois Surety Company, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said United States of America, its

certain Attorneys, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 6th day of November, in the year of our Lord one thousand nine hundred and eleven.

Whereas, lately at a District Court of the United States for the Northern District of California, in a matter pending in said Court, in which said Low Wah Suey, was a petitioner for a Writ of Habeas Corpus for and upon behalf of his wife Li A. Sim, both of whom are the appellants herein, a Judgment was rendered against the said Appellants and the said Appellants having obtained from said Court an Order allowing an appeal to reverse the Judgment of the aforesaid matter, and a Citation directed to Samuel W. Backus, Commissioner of Immigration for the Port of San Francisco, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden in the City of Washington, District of Columbia, within thirty days from the date thereof, to-wit, October 20th, 1911.

Now, the condition of the obligation is such, that if the
38 said Appellants shall prosecute the said appeal to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

LOW WAH SUEY. [SEAL.]
her
LI A. x SIM. [SEAL.]
mark.
ILLINOIS SURETY COMPANY,
By CHARLES T. HUGHES, [SEAL.]
Its Attorney in Fact.

Acknowledged before me the day and year first above written.
[SEAL.] JAS. P. BROWN,
United States Commissioner, Northern District of California.

Form of Bond and sufficiency of Securities approved this 7th day of November, A. D. 1911.

JOHN J. DE HAVEN,
United States District Judge.

(Endorsed:) Cost Bond on Appeal. Filed Nov. 7, 1911. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

39 In the United States District Court, Northern District of California.

No. 15,197.

In the Matter of the Application of LOW WAH SUEY for a Writ of Habeas Corpus for and on Behalf of LI A. SIM, His Wife.

(Order Extending Time to File Transcript of Appeal and Association of Attorney.)

Upon motion of Geo. A. McGowan, Esq., the Attorney for the Petitioners herein, Corry M. Stadden, Esq., of Washington, D. C., is hereby associated as an Attorney for the Petitioners and Appellants herein.

In the above entitled cause it is Ordered that the time for filing the record and docketing the action in the United States Supreme Court upon the Citation heretofore filed in said cause, be and the same is hereby enlarged to and including the first day of December, A. D. 1911.

Dated, San Francisco, Cal. Nov. 17th, A. D. 1911.

JOHN J. DE HAVEN,
District Judge.

Service of the within Order extending time to docket case and containing notice of association of Attorneys, and receipt of a copy thereof, is hereby admitted this 17th day of November, A. D. 1911.

ROBT. T. DEVLIN,
United States Attorney.

(Endorsed:) Association of Attorneys, and Order extending time, for filing Record and docketing action. Filed Nov. 17, 1911. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

40 I, Jas. P. Brown, Clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing and hereunto annexed thirty-nine pages, numbered from 1 to 39 inclusive, contain a full, true and correct Transcript of the record in said United States District Court in the proceeding entitled "In the matter of the Application of Low Wah Suey, for a Writ of Habeas Corpus, for and on behalf of Li A. Sim, his Wife," and number- 15,197, made up pursuant to the instructions of Geo. A. McGowan, Esq., Attorney for the Appellants herein.

I further certify that the costs of preparing and certifying the foregoing transcript on Appeal is the sum of Eighteen Dollars and Fourty cents ($18.40), and that the same has been paid to me by said Geo. A. McGowan, Esq., Attorney for Petitioners and Appellants herein.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court this 20th day of November, A. D. 1911.

[Seal U. S. District Court, Northern Dist. of California.]

JAS. P. BROWN,
Clerk United States District Court for the Norther- District of California.

Endorsed on cover: File No. 22,945. N. California D. C. U. S. Term No. 869. Low Wah Suey and Li A. Sim (Mrs. Low Wah Suey), appellants, vs. Samuel W. Backus, Commissioner of Immigration, port of San Francisco. Filed November 29, 1911. File No. 22,945.

MOTION TO DISMISS OR AFFIRM

No. 869.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

LOW WAH SUEY AND LI A. SIM (MRS. LOW WAH SUEY), appellants,
v.
SAMUEL W. BACKUS, COMMISSIONER OF IMMIGRATION, port of San Francisco.
} No. 869.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

MOTION TO DISMISS OR AFFIRM, AND BRIEF IN SUPPORT THEREOF.

Comes now the Solicitor General on behalf of the appellee and moves the court to dismiss or affirm the above-entitled case, and in support thereof, says:

STATEMENT.

The appellant, Li A. Sim, a Chinese woman, was ordered by the Department of Commerce and Labor to be deported, the warrant of deportation reciting (R., 9–10) that, after a due hearing, she had been "found an inmate of a house of prostitution subsequent to her entry into the United States," in

violation of the immigration act of February 20, 1907 (34 Stat., 898), as amended by the act of March 26, 1910 (36 Stat., 263).

A petition for a writ of habeas corpus was filed on behalf of Li A. Sim, alleging that the Secretary of Commerce and Labor has no authority to deport her, for the reason that her husband, Low Wah Suey, is an American citizen because of his birth in this country; that she is domiciled and living in California with her husband and their son, born in this country; and that by reason of her said marriage she became and now is a citizen (R., 1–3).

The petition also charges that in the proceedings by the immigration officials resulting in the order of deportation a fair hearing was not granted (R., 3–6), but a transcript of the proceedings is not attached and the substance thereof is not stated.

The appellee, in a demurrer to the petition (R., 11), asserted that it did not state facts sufficient to justify the issuance of a writ of habeas corpus, for the reason, first, that an abuse of discretion on the part of the immigration officials is not shown, and, second, that it appears from the petition that Li A. Sim—

> is a person subject to the immigration laws of the United States, and as such, upon proper proceedings before the immigration officials, is liable to deportation.

The District Court sustained this demurrer and denied the petition (R., 12), and an appeal was taken direct to this court (R., 12, 13), the assignments of error alleging that the court erred in sus-

taining the demurrer and dismissing the petition. (R., 13–16.)

ARGUMENT.

I.

This case is substantially identical with that of *Yeung How* v. *North*, No. 524 of the present term, which was dismissed by the court on October 23, 1911, for want of jurisdiction.

In the *Yeung How* case, as in this, the warrant of deportation recited that she had been found an inmate of a house of prostitution. Yeung How also was the wife of an American-born Chinaman, and hence it was contended that she was not subject to deportation under the provisions of the acts regulating the immigration of aliens. Habeas corpus proceedings were initiated in her behalf, and from a judgment of the Circuit Court discharging the writ an appeal was taken to this court.

The order dismissing the appeal in that case was as follows:

> Dismissed for the want of jurisdiction. *Farrell* v. *O'Brien* (199 U. S., 89, 100); *David Kaufman & Sons Company* v. *Smith* (216 U. S., 610); *Fong Yue Ting* v. *United States* (149 U. S., 698, 716); section 14 of the act of May 6, 1882 (22 Stat., 61).

The first two cases cited above (*Farrell* v. *O'Brien*, 199 U. S., 89, 100, and *David Kaufman & Sons Company* v. *Smith*, 216 U. S., 610) held it to be "established that to give this court jurisdiction on a direct appeal from, or writ of error to, a Circuit Court on

the ground of a constitutional question, such question must be real and substantial, and not a mere claim in words."

In *Fong Yue Ting* v. *United States* (149 U. S., 698, 716), the other case cited, it was held that—

> Chinese persons not born in this country have never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws.

Section 14 of the act of May 6, 1882 (22 Stat. 58, 61), also referred to as authority for dismissing the Yeung How appeal, provides:

> That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

Section 1994 of the Revised Statutes provides:

> Sec. 1994. Any woman who is now or may hereafter be married to a citizen of the United States, *and who might herself be lawfully naturalized*, shall be deemed a citizen.

It is well settled that the words "*who might* herself be lawfully naturalized" in this statute refer to the *class* or *race* who might be lawfully naturalized.

Kelly v. *Owen*, 7 Wall., 496.
Burton v. *Burton*, 1 Keyes, N. Y., 359.
Leonard v. *Grant*, 5 Fed., 11.
Kane v. *McCarthy*, 63 N. C., 299.
United States v. *Kellar*, 13 Fed., 82.

As stated by this court, *supra*, the Chinese are a race proscribed under the naturalization laws, and

therefore the marriage of Li A. Sim to a citizen could not confer citizenship upon her.

II.

In support of the charge that in the proceedings by the immigration officials a fair hearing was not granted, the petition alleges that "at certain stages of the proceedings" she was not allowed to be represented by or consult with counsel (R., 3, 4); that she was questioned against her will and her answers incorporated into the record (R., 4); that the immigration officials refused to take steps to enforce the attendance of a witness on her behalf (R., 4); that certain alleged hearsay evidence was considered (R., 4, 5); and that rule 35 of the regulations of the Department of Commerce and Labor governing the procedure in deportation cases was "illegally issued," is "unreasonable and unjust," and "constitutes an abuse of discretion" (R., 5–6).

In response it seems sufficient to call attention to the general rule that if the detention is claimed to be unlawful by reason of the invalidity of the proceedings under which the party is held in custody, copies of such "proceedings must be annexed to or the essential parts thereof set out in the petition, and mere averments of conclusions of law are necessarily inadequate." (*Craemer* v. *Washington State*, 168 U. S., 124, 129; *Terlinden* v. *Ames*, 184 U. S., 270, 279; *Haw Moy* v. *North*, 183 Fed., 89.)

The reasons given in the petition (R., 6, 7) for not attaching a copy of the proceedings, to the effect that

the "record is too voluminous," that it "would burden this petition and cloud the issue," that the entire record can not be secured in time, and that the Commissioner of Immigration can produce a copy, are manifestly insufficient to excuse the petitioner from stating, for the information of the court, in accordance with the requirements of this general rule, the essential parts of the proceedings alleged to be unlawful. The averments of the petition in this connection are either mere conclusions of law or too indefinite to advise the court as to matters of fact.

Li A. Sim is now held in the custody of the immigration officials at Angel Island, Cal., at considerable expense to the Government. For the reasons stated, there is no substantial basis for the claim that she is a citizen, or that a fair hearing was not accorded her by the immigration officials, and apparently the appeal is taken only for the purpose of delay.

It is therefore respectfully submitted that the appeal should be dismissed for want of jurisdiction or the judgment of the District Court affirmed.

FREDERICK W. LEHMANN,
Solicitor General.
WILLIAM R. HARR,
Assistant Attorney General.

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28

No. 869

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1911.

LOW WAH SUEY and LI A. SIM
(Mrs. Low Wah Suey),
Appellants,

vs.

SAMUEL W. BACKUS, Commissioner
of Immigration, Port of San Francisco,
Appellee.

Appeal from the District Court of the United States for the Northern District of California.

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM AND IN SUPPORT OF APPEAL

CORRY M. STADDEN,
Attorney for Appellant.
Commercial Bank Building,
Washington, D. C.

GEO. A. McGOWAN,
Of Counsel.
Bank of Italy Building,
San Francisco, Cal.

No. 869

In the Supreme Court

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OCTOBER TERM, 1911.

LOW WAH SUEY and LI A. SIM (Mrs. Low Wah Suey),
Appellants,

vs.

SAMUEL W. BACKUS, Commissioner of Immigration, Port of San Francisco,
Appellee.

Appeal from the District Court of the United States for the Northern District of California.

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM AND IN SUPPORT OF APPEAL

Come now the appellants herein in opposition to the motion to dismiss or affirm made on behalf of the appellee and ask that said motion be denied and that the judgment appealed from be reversed, and in support thereof, say:

Statement.

The statement contained in the said motion of the appellee is insufficient to convey to the Court the complete facts involved in this controversy, particularly as it but partially and very inadequately recites the facts which constitute the groundwork of the case of appellants.

One of the appellants, Li A. Sim, a Chinese woman, was ordered to be deported by the Secretary of Commerce and Labor, the warrant for such deportation reciting that, after due hearing, she had been "found an inmate of a house of prostitution subsequent to her entry into the United States", in violation of the Immigration Act of February 20, 1907 (34 Stat., 898) as amended by the Act of March 26, 1910 (36 Stat., 263). The said warrant is annexed to the petition as an exhibit and is set forth on pages 9 and 10 of the record. The said Li A. Sim was in custody awaiting the execution of said warrant.

A petition for a writ of habeas corpus was filed on behalf of the said Li A. Sim by her husband, Low Wah Suey, a native born American citizen, who also therein petitions the Court upon his own behalf as the husband of the said Li A. Sim and also for their infant son, Low Sang, who is a citizen both by virtue of his birth in this country and also his father's citizenship (R., 1-9).

The petition alleges certain facts, the citizenship of Low Wah Suey, his marriage to Li A. Sim; their

entry into the United States, their subsequent continuous life together as husband and wife and the birth of their son, Low Sang, to them at their mutual home in California (R., 1); that Li A. Sim is now a citizen's wife living with her husband as his wife, at their mutual home, and that she is a regularly domiciled resident, denizen and inhabitant of California and that she has no home, abode or domicile elsewhere; that by virtue of this marriage and residence Li A. Sim became a citizen of the State of California (R., 2).

The petition then proceeds to recite the detention of Li A. Sim, that she is about to be deported to China, and the illegality of such detention. That Samuel W. Backus, Commissioner of Immigration, holds the said warrant of deportation for the purpose of executing it; that the Secretary of Commerce and Labor had no lawful authority to issue said warrant. Then follows in exact and explicit language the recitals of Low Wah Suey's citizenship, his marriage to Li A. Sim, their continuous life together, the birth of their child, that Li A. Sim's home, abode and domicile were in California and that she has no home or domicile elsewhere (R., 2-3—VI, First and Second). These averments all contain the recital that these facts were conclusively shown at the pretended hearing as a result of which said warrant was issued, thus removing them from the realm of uncertainty and showing that the warrant was issued over the admitted conclusive establishing of said facts at the pretended hearing.

Then follows an averment of Li A. Sim's citizenship of the State of California by virtue of her marriage and residence here (R., 3—VI, Third).

The petition next alleges that a fair hearing was not accorded by the immigration officers. The transcript of the pretended hearing is not attached but its absence is explained and the substance thereof is alleged wherever assailed. The first specification is that from January 27, 1911, to January 31, 1911, a period of four days, Li A. Sim was kept in close custody and denied the right of counsel and her counsel refused the right to be present at the hearings in her case during said time and that the proceedings and examinations had and made on said days were incorporated in the record of said pretended hearing over her objection and to her great damage. She was arrested on January 27, 1911 (R., 3—Fourth, a). The next specification is that during these same four days she was refused the right to consult with her attorney (R., 4—Fourth, b). Then follows an averment that the immigration officers, though exercising judicial power, refused to take any steps to direct, or if necessary, enforce the attendance of a material witness requested on behalf of Li A. Sim, though the said immigration officers did use this requested process to cause the attendance of the witnesses to testify against Li A. Sim. That she could not safely submit her case without the testimony of this witness so specifically requested and over her protest the said hearing was closed. That had she the benefit

of the testimony of this witness the Secretary would doubtless have been restrained from issuing the warrant of deportation (R., 4—Fourth, c).

Next follows an averment that bad faith was shown in arbitrarily receiving in evidence over Li A. Sim's objection, hearsay testimony detrimental to her and in refusing wilfully to furnish the name of the person alleged to have made said statements, thus preventing Li A. Sim from showing the lack of knowledge or malice of the person whose identity was so concealed (R. 4-5—Fourth, "e", should be "d"). Then follows an averment of bad faith in keeping and finally considering, in the pretended hearing, a report containing hearsay statements detrimental to the detained, and withholding the name of the informer; that the report was dated January 31, 1911, and though the hearing closed June 21, 1911, no witnesses were called by the immigration officers to support it, and in this way Li A. Sim was misled and prevented from defending herself against it (R., 5—Fourth, e). Next comes an averment that there was no hearing on the merits of her case before the Secretary or any Acting or Assistant Secretary (R., 5—Fourth, f). Then comes an averment that a fair hearing was denied because Rule 35, subdivision B-E and H, under which said pretended hearing was had, is unreasonable and unjust and contrary and inconsistent with law and hence illegal (R., 5-6—Fourth, g). Next follows an averment of abuse of discretion on the part of the Secretary and immigration officers in this that Li A.

Sim did in said hearing "show conclusively by an overwhelming weight of evidence" that she was not an objectionable alien as alleged in said warrant and further

> "that there was no evidence produced from which it could fairly, honestly, justly, legitimately or at all be established that she was such an objectionable alien as charged and that in so finding the said officers and each and all of them abused the discretion vested in them in violation of said statutes and said rules and regulations" (R., 6—Fourth, h).

Next follows an independent averment that Li A. Sim has never been an undesirable alien as charged but that she has lived with her husband as his wife and that she has followed no other occupation or avocation than as housewife to her husband and that these facts were conclusively shown at the pretended hearing (R., 6—VIII). The petition next recites that a copy of the entire proceedings is not attached to the petition for the reason that it is too voluminous and would burden the petition and cloud the issue; that the petitioner has not a copy and that he is unable to secure one in time to file with the petition; that the Commissioner (the person to whom the order sought was to run) has such a copy and can produce it with the detained. A copy of the warrant of deportation annexed as an exhibit (R., 6-7—IX). An averment that all executive remedies have been exhausted is also set forth (R., 4—Fourth, c, last paragraph).

The husband petitioning in his own right as an admitted citizen of the United States then on his own behalf and on behalf of his infant son alleges and re-alleges most of these averments above mentioned (R., 7-8—I and III). The petition then further recites the violation of the petitioner Low Wah Suey's and his son Low Sang's constitutional guarantees in infringing their rights by seeking to deprive the one of his wife and the other of his mother, without having made them a party to the pretended hearing or without having accorded a hearing that would afford their respective rights and privileges the protection of the guarantees contained in Sec. 1, Article III, of the Constitution and particularly in violation of Articles IV, V, VI, VIII, IX, in amendment thereof. And further that if the warrant is executed that then if they attempt to exercise their inalienable right to have Li A. Sim return here to their home and her home to be with them, that then and in that event they would be committing a misdemeanor (R., 7-8—II). The petition then concludes with the prayer that a writ of habeas corpus might issue to the end that Li A. Sim's detention might be enquired into (R., 8-9).

To the order to show cause issued in response to this petition, the respondent demurred. The demurrer is general and recites that from the petition it is shown that Li A. Sim is a person subject to the immigration laws and that the facts alleged therein do not constitute an abuse of discretion. The lower Court sustained the demurrer (R., 10, 11

and 12). Low Wah Suey and his wife jointly appear as appellants. The papers on appeal are in regular order and all appear of record (R., 12-19).

Argument.

The Solicitor General in presenting his argument advances two separate theories. The first is upon the law of the case and the second is of procedure, touching the sufficiency of the allegations of abuse of discretion. We will conform to this arrangement as nearly as possible.

FIRST.

The theory is advanced that this Court is without jurisdiction. The case of Yeung How v. North, No. 524 of the present term, which was dismissed on October 23, 1911, is cited as being substantially identical with the case at bar. We cannot agreed to this conclusion. In fact the two cases are entirely dissimilar. *In the case of Yeung How, before the lower Court, an entire new trial was had.* Upon the detained presenting her evidence of an unfair hearing, the Government practically conceded that her contention was correct and so a *writ of habeas corpus was issued and then the case entirely retried upon the main issues.* The lower Court found against her and she appealed. Yeung How had a trial upon the main issues of her case before the *judicial branch* of the Government; she

had process to obtain her witnesses; the prejudicial matters complained of in her trial before the *executive branch* of the Government did not enter into this *judicial hearing.* Yeung How entered the United States as a citizen's wife it is true but her husband had died and so no existing rights of coverture were involved. No rights other than her own were before the Court and none other in the nature of things could be entitled to consideration. She was found to be a prostitute by the *judicial branch* of the Government and we believe she contended she was within her rights in following that occupation. The case of Li A. Sim is entirely different from this. The rights of her husband are before the Court both on his own behalf and on behalf of his minor son. The coverture and its rights are a real issue. Ths husband, Low Wah Suey, was the *petitioner* and he is now before this Court as a *joint appellant* with his wife. They are now before this Court contending that Li A. Sim is not now and that she never has followed the avocation of a prostitute or done any act which renders her subject to deportation; that the pretended hearing before the executive branch of the Government was not a fair hearing. The demurrer, for the purposes of this hearing, admits the truth of the allegations of the petition. The rights of coverture, the rights of the husband and son, both of whom are admitted to be native born citizens of the United States, and the points specifically made as to the unfair elements of the hearing complained of, are all admitted to be

true by the demurrer. We are therefore before the Court virtually upon questions of law alone. It is plain to be seen that Yeung How's claim was neither real or substantial but a mere chain of words. Her claim of the rights of coverture was a hollow sham for with her husband's death the coverture ended and certainly his rights in the premises terminated with the ending of his earthly career. The case of Li A. Sim and her husband and child present a very different set of facts for the Court's consideration, theirs are existing rights, rights now before the Court.

It is next pointed out that Chinese persons are not capable of naturalization (Fong Yue Ting v. U. S., 149 U. S. 698); that no State Court or Court of the United States shall admit Chinese to citizenship and the repeal of all laws conflicting therewith (Sec. 14, Act of May 6, 1882, 22 Stats. 58, 61), and finally Sec. 1994 of the Revised Statutes, which provides that when a woman marries a citizen, she shall be deemed a citizen if she is such a woman *who might herself be lawfully naturalized.* Then follow five cases cited for the purpose of showing that the words in italics just preceding refer to the class or race who might be lawfully naturalized. The Chinese being a proscribed race and Li A. Sim being of that race, it is contended that her marriage did not make her a citizen of the United States. In the *Yeung How* case the termination of her rights of coverture with her husband's death left her, if an alien, then such an alien as came within the meaning and intent of the general immigration law.

Upon behalf of these appellants we advance the claim that the rights of citizenship of Low Wah Suey, the husband, and Low Sang, the baby boy born to these appellants, are involved and are properly before the Court. These two persons are admittedly citizens of the United States and Li A. Sim is admittedly the wife of the former and the mother of the latter. What rights do these relationships confer upon her? We believe that the rights of these three persons are inseparably annexed and must be jointly considered. Their rights are joint rights. We are not put to such an extreme position in this matter for we do not believe it is essential for us to contend that the marriage conferred citizenship. We believe that even if the marriage left Li A. Sim an alien, she was not such an alien as was contemplated or intended to be included within the terms of the General Immigration Law. Let us examine the authorities upon the point in question.

In U. S. v. Kirby, 7 Wall. 482, 486, Mr. Justice Field, in speaking for the Court, said:

> "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

In Gonzales v. Williams, 192 U. S. 1, we find the immigration authorities denying a citizen and native of Porto Rico, admission to this country, on the

ground that she was a alien to be excluded within the meaning of the General Immigration Law. Porto Ricans were not held to be citizens of this country though they owe no foreign allegiance to any other country. Mr. Chief Justice Fuller in delivering the opinion said:

> "If she was not an alien immigrant within the intent and meaning of Act Cong. * * * March 3, 1891, c. 551, 26 Stat. 1084 (U. S. Comp. Stat. 1901, p. 1294), the commissioner had no power to detain or deport her, and the final order of the Circuit Court must be reversed. * * * And in the present case, as Gonzales did not come within the Act of 1891, the commissioner had no jurisdiction to detain and deport her by deciding a mere question of law to the contrary, and she was not obliged to resort to the superintendent or to the secretary."

The Chief Justice, in speaking for the Court, also said:

> "We think it clear that the act relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof, and that citizens of Porto Rico whose permanent allegiance is due to the United States, who live in the peace of the dominion of the United States, the organic law of whose domicil was enacted by the United States, and is enforced through officials sworn to support the Constitution of the United States, are not 'aliens'."

Directly in line with this trend of thought is the case of Thakla Nicola et al., 184 Fed. 322, decided by the Circuit Court of Appeals of the Second Circuit. The Court said:

"The fact, if it be a fact, that these relators are undesirable citizens, is not germane to the present controversy. As pointed out by Judge Hand (United States v. Williams, (D. C.) 173 Fed. 626), a woman does not lose her citizenship because her health is bad or her moral character open to criticism. These relators are not citizens of the countries from which they came, as those countries by the mere act of marriage with an American citizen terminate their allegiance. They are American citizens or they are without a country. That they are citizens is affirmed, we think, by the great weight of authority, several of the leading cases being cited in the opinion of the district judge. Being citizens they cannot be excluded as aliens."

The authoritative case upon the status of the Chinese wife of an American born citizen is that of Tsoi Sim v. U. S., 116 Fed. 925, decided by the Circuit Court of Appeals for the Ninth Circuit. The Court said:

"Her marriage was not fraudulent, but lawful, and in accordance with the usages and customs of our law. Whatever effect her error of omission in failing, during a few years of her infancy, to obtain a certificate of registration, if any she was entitled to, it certainly did not deprive her of the right to marry an American citizen lawfully domiciled in this country. This she did. By this act, her status was changed from that of a Chinese laborer to that of a wife of a native born American. Her husband is not before the court, but his rights, as well as hers, are involved. The law is well settled, that one born in the United States of Chinese parents who were permanently domiciled here, though an alien, is a citizen of the United States, and cannot be excluded therefrom, or

> denied the right of entry. (Lee Sing Far v. U. S., C. C. A. 372, 94 Fed. 834, 836; U. S. v. Wong Kim Ark, 169 U. S. 649, 705, 18 Sup. Ct. 456, 42 L. Ed. 890.) It being the law that the wife and children of a Chinese merchant are permitted to remain in this country because the domicile of the wife and children is that of the husband and father, as was expressly held In re Chung Toy Ho, and approved by the Supreme Court of the U. S. in U. S. v. Gue Lim, supra, upon what method of legal reasoning can it be held that the wife of an American citizen is not entitled to the same 'rights, privileges, and immunities' under the law? The Chinese merchant does not stand upon a higher plane than the Chinaman who is born of parents of Chinese descent, having a permanent domicile and residence in the United States. On the contrary, the native born, by virtue of his birth, becomes a citizen of the United States, and is entitled to greater rights and privileges than the alien merchant. The wife has the right to live with her husband; enjoy his society; receive his support and maintenance and all the comforts and privileges of the marriage relations. These are her, as well as his natural rights. By virtue of her marriage, her husband's domicile became her domicile, and thereafter was entitled to live with her husband, and remain in this country."

The contention of the Government seems to be predicated upon the assumption that Li A. Sim did not become a citizen by virtue of her marriage to Low Wah Suey, because she could not be lawfully naturalized, and for that reason no rights were conferred upon her. We do not accept this view. We take this to be an erroneous view of the law. We desire to cite an extract from an opinion rendered

by the Solicitor of the Treasury, which is published in volume 3 of the Treasury Decisions of January-December, 1900. The letter published therein bears No. 22551, Treasury Department, October 19, 1900. The letter is published in full in the case of Tsoi Sim v. U. S., supra. The part we desire to quote being as follows:

> "I do not think that section 1994, Revised Statutes, applies to this case. There is no question of citizenship as to the wife involved. She does not apply to be landed because of any supposed right to be lawfully 'naturalized', but because she is the wife of a native born citizen of the United States. I do not think that her right to land depends on the status of her husband as a merchant, even assuming that the exclusion laws in this regard apply to a Chinese merchant who is a citizen of this country, but rather on her higher right not to be separated from her husband, who is a citizen of the United States, and is legally entitled to live in the country of his birth."

We believe the solution of this matter to be further contained in the case of Tsoi Sim v. U. S., supra, and that is, that in the theory of the law, the domicile of the wife is the domicile of the husband, and therefore the three year limitation contained in Sections 20 and 21 of the General Immigration Law, which, be it understood, have never been since amended, fails in its application to this wife, for her domicile is that of her husband, and is unaffected by the limitation. This is, of course, upon the assumption that the coverture exists in its full force and vigor, and the petition in this matter affirma-

tively and positively sets this forth, and being simply demurred to, it therefore stands so admitted before the Court.

Quoting further from Tsoi Sim v. U. S., supra, the Court said:

> "These cases recognize the principle that the domicile of the parents is the domicile of the children, and that the status of the wife is fixed by the status of the husband. That the domicile of the husband is the domicile of the wife is well settled; it was so expressly held in Anderson v. Watts, 138 U. S. 694, 706, 11 Sup. Ct. 449, 34 L. Ed. 1078. In that case the court said:
>
> " 'The place where a person lives is taken to be his domicile until facts adduced establish the contrary, and a domicile, when acquired, is presumed to continue until it is shown to have been changed. Mitchell v. U. S., 21 Wall. 350, 352, 22 L. Ed. 584; Desmare v. U. S., 93 U. S. 605, 23 L. Ed. 959; Shelton v. Tiffin, 6 How. 163, 12 L. Ed. 387; Ennis v. Smith, 14 How. 400, 14 L. Ed. 472. And, although the wife may be residing in another place, the domicile of husband is her domicile. Story, Confl. Laws, 46; Whart., Confl. Laws, 43; and cases cited. Even where a wife is living apart from her husband, without sufficient cause, his domicile is in law her domicile. Cheely v. Clayton, 110 U. S. 701, 705, 4 Sup. Ct. 328, 28 L. Ed. 298. The rule is, said Chief Justice Shaw in Harteau v. Harteau, 14 Pick. 191, 185, 25 Am. Dec. 372, "founded upon the theoretic identity of person and of interest between husband and wife, as established by law, and the presumption that from the nature of that relation, the home of the one is that of the other, and intended to promote, strengthen, and secure their interests in this relation, as it ordinarily exists, where union and harmony prevail." '

"See, also, 10 Am. & Eng. Enc. Law 32, and authorities there cited."

Following the doctrine of *Thakla Nicola et al., supra,* we find that upon her marriage, Li A. Sim's allegiance to a foreign country terminated. If that marriage conferred no direct citizenship upon her it at least left her owing no allegiance foreign to that of her husband's country. Taking then the doctrine of *Gonzales v. Williams, supra,* we find it held that the act under consideration only relates *"to foreigners as respects this country, to persons "owing allegiance to a foreign government".* Following further in theory this last case we find that *Gonzales was not held to be a citizen* but that her allegiance was due to Porto Rico, which in turn owed allegiance to the United States. *Li A. Sim is claimed not to be a citizen* by the immigration officials, though she has no foreign allegiance, and such allegiance as she has is due only to her husband and son, both of whom owe allegiance to the United States as native born citizens thereof. Can it not therefore with due propriety be said of *Li A. Sim* and her class, as was said of *Gonzales* and her class, that they "are not 'aliens' " within the meaning of the immigration law? We think that any other answer would be to lead to absurd results. The identity of interest of Li A. Sim and her husband and child, their mutual inalienable rights and privileges spoken of in *Tsoi Sim v. U. S., supra,* and in the opinion of the Solicitor of the Treasury hereinbefore mentioned, certainly give her the protection of

her husband's citizenship and most certainly *his rights, which flow from his citizenship, are not stopped and terminated because he marries a woman of the Chinese race,* and seriously, this is the end to which the contention of the immigration officials would lead us.

We have set up in the petition a claim of citizenship in the United States and also in the State of California, as flowing from this marriage. This claim is predicated upon the fact that Sec. 1994 of the Revised Statutes (Act of February 10, 1855, ch. 71, 10 Stat. L. 604) was passed in 1855. On December 8, 1894, a treaty with China was proclaimed (28 Stat. L. 1210). In Article IV of this treaty we find the following:

> "shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens."

It appears from this that the only right withheld from the Chinese is *naturalization.* Now there are other ways of acquiring citizenship than by naturalization. For example we find that upon the annexation of Hawaii all its citizens, including Chinese, who claimed citizenship either by birth, naturalization or any other way, were incorporated into the citizenship of the United States (Sec. 4, Act of April 30, 1900; ch. 339, 31 Stat. L. 141 and also 23 Op. Atty. Gen. 345 and 509). Does it not seem reasonable that by this modification Congress intended

that while naturalization was to be denied, still citizenship might be acquired in the way not prohibited, to wit, marriage. *Marriage is not naturalization. The right of naturalization alone is withheld.* Further than this the citizenship in a state is separate and distinct from that of the nation. Congress may pass a uniform naturalization law but it cannot regulate marriage and the rights and privileges flowing from marriage. That is a matter of State concern. There is no prohibition to the wife's citizenship of the State of California by her marriage.

There is also advanced in the petition certain claims that the constitutional rights of Low Wah Suey and his son, Low Sang, and such rights as Li A. Sim may have thereunder, have been invaded. This case is distinguished from that of *Yeung How, supra,* in this two-fold manner. First, Yeung How had a hearing on the merits before the judicial branch of the Government and on that hearing, judicial in its nature, the guarantees of the Constitution were respected. These appellants seek such a hearing. Second, Yeung How, a widow, was alone before the Court, no real or present right of citizenship was involved. These two citizens, the husband and son, are before the Court urging their rights of citizenship and claiming their constitutional guarantees, as is also the wife and mother. The coverture is admitted to be in full force and vigor. In these two all-controlling points are these two cases distinguished. Where only aliens and the rights of aliens are under consideration, these exec-

utive hearings may or may not be legally sufficient, but where the immigration officials admit and concede that the person proceeded against is the wife of an American citizen, and is being further admitted that the coverture exists in full force and vigor, it presents the status of one clearly without the reason and spirit of the law under consideration.

In the case of U. S. v. Williams, 185 Fed. Rep. 598, Judge Holt, after setting forth the usual practice in such executive hearings states as follows:

> "It is, of course, obvious that such a method of procedure disregards almost every fundamental principle established in England and this country for the protection of persons charged with an offense. The person arrested does not necessarily know who instigated the prosecution. He is held in seclusion, and is not permitted to consult counsel until he has been privately examined under oath. The whole proceeding is usually substantially in the control of one of the inspectors, who acts in it as informer, arresting officer, inquisitor and judge. The Secretary who issues the order of arrest and the order of deportation is an administrative officer who sits hundreds of miles away, and never sees or hears the person proceeded against or the witnesses. Aliens, if arrested, are at least entitled to the rights which such a system accords them; and, if they are deprived of any such right the proceeding is clearly irregular, and any order of deportation issued in it invalid."

In the case of Redfern v. Halpert, 186 Fed. 150, the Circuit Court of Appeals for the Fifth Circuit decided as follows:

> "The immigration statutes are very drastic, deal arbitrarily with human liberty, and I consider they should be strictly construed."

We have set up in the petition that the rules under which the pretended hearing was held are unfair and hence invalid. The statute, Sec. 22, which provides for the promulgation of the rules and regulations is as follows:

> "* * * He shall establish such rules and regulations, * * * and shall issue from time to time such instructions, not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this Act and for protecting the United States and aliens migrating thereto from fraud and loss. * * *."

Did Congress intend when it said that the rules and regulations should be *not inconsistent with law* and further when it treated with a refreshing degree of mutuality the *protecting the United States and aliens from fraud and loss* that there should be built up under that authority so delegated to the Commissioner General of Immigration and the Secretary of Commerce and Labor, a class of procedure which (quoting from U. S. v. Williams, supra) *disregards almost every fundamental principle established in England and this country for the protection of persons charged with an offence?* That question has been partially answered by the Circuit Court of Appeals for the Fifth Circuit in the Redfern v. Halpert case, supra, when it said *the immigration statutes are very drastic, deal arbitrarily with human liberty, and I consider they should be strictly con-*

strued. We do not proclaim a breakdown in the law but we do contend that the rules and regulations are inadequate to accord a fair hearing. An impaired right of counsel, extending both to preventing counseling with one's attorney and preventing his representing the detained at hearings; refusing to divulge full evidence and the source from which it comes, presented against one, thus preventing a proper counter showing by the defense being made; refusing to call a most material witness at the instance of the defense or to attain that end by using the same authority or process to cause his attendance, which the immigration officials freely use to cause the attendance of their own witnesses; presenting prejudicial reports to the department when no evidence was produced to support them, though many hearings were had where ample opportunity existed for the production of such witnesses, if any there were. These and many other things set forth in the petition certainly fall far short of the gauge of fair play set by Congress in the act in question. This procedure is destructive of liberty and fair play, is contrary to law and does not protect the person proceeded against from fraud and loss. Whatever may be said of it when applied to the case of an alien whose rights alone are before the Court, it certainly appears appalling when applied to a citizen's wife living here with her husband and their son, the son, mark you, being born just twelve days after the mother's arrest. A woman in such an advanced condition of pregnancy should not have been denied the

rights herein complained of, particularly with nothing but suspicion against her.

SECOND.

The solicitor recites, upon the procedure involved, that we should have annexed copies of the proceeding or the essential part thereof, to the petition. We reply to that by stating that it is a very good rule but very inaptly applied. On pages 6 and 7 of the record are contained the reasons why the copy of the proceedings are not annexed. Before taking them up we desire to state that where the reason and spirit of the rule fails that there the rule itself must fail. The petition for a writ of habeas corpus must not be hampered down and weighted so that it would fail in its purpose. It is a simple, plain and speedy remedy calculated to meet the exigencies of any and all occasions. If haste is an element, then for a court to require a voluminous petition burdened down with massive exhibits which in the nature of things could not be prepared and annexed to the petition, much less read and considered by the Court, in time to avert the evil complained of, would simply be to admit that no remedy exists for the evil complained of.

The petition recites on page 4 of the record

> *"That unless the writ issue as prayed for * * * directed to * * * Commissioner of Immigration * * * in whose custody the body of the said Li A. Sim now is, the said Li A. Sim will forthwith be deported. * * *"*

Not deported next week or next month, but *forthwith!* Now on pages 6 and 7 of the record are contained the reasons why the copy of the record is not annexed. First, that it is *too voluminous,* no part could be coherently or clearly stated, and that it would *burden the petition and cloud the issue:* Second, that the *petitioner did not have a copy and that he was unable to secure the same in time to file with the petition:* and Third, that the Commissioner had such a copy and could produce it with the body of Li A. Sim.

To require, in cases such as this, that a copy of the record be annexed to the petition, would be to defeat the very purpose of the writ applied for. These orders of deportation arrive a very short time before the deportation is to take place and it usually amounts to a race to get such a proceeding started in time to prevent the deportation. The records in question are kept at the Angel Island immigration station, in an inaccessible portion of San Francisco bay. The round trip takes quite a half day of one's time, and that only leaves a very limited opportunity for copying of documents and papers. To require this to be done when the time permits is proper, but *when the time will not permit, then either technicalities must be cut or there is a wrong without a remedy.* We submit in such an emergency the proper order to make is for the production of the record with the body of the detained. There are many records in the local federal courts where even such petitions as the one

here presented have failed in their purpose because the Court could not find time to examine the petition before the deportation actually took place. The case of Sz To Dew, a habeas corpus matter, No. 15109, arising in the same Court as this present proceeding, is a case in point. The deportation occurred at one o'clock in the afternoon while the order to show cause which was to prevent the deportation was actually signed by the judge and filed in the office of the clerk at 3.20 P. M., or two hours and twenty minutes after the deportation sought to be prevented had actually taken place. The case of Haw Moy v. North, 183 Fed. 89, cited by the solicitor in support of his point, may well be turned against him. The Court said:

> "Copies of the warrant of arrest and proceedings under which the appellant is held are not attached or annexed to the petition, nor is the essential part stated, *nor is there any cause assigned for such omission.*"

In the case at bar the reason is most clearly stated why the copy of the record is not attached. We contend that the rule announced by the Supreme Court of the United States in the case of Chin Yow v. U. S., supra, should govern in this matter. In that case the Court said:

> "We do not scrutinize the allegations as if they were contained in a criminal indictment before the court upon a special demurrer, but without further detail read them as importing that the petitioner arbitrarily was denied such a hearing, and such an opportunity to prove his right to enter the country, as the statute meant that he should have."

Further than this the lower Court found no uncertainty in the averments of the petition. What seems to be desired by the local bench and bar is a further and authoritative decision upon the question of abuse of discretion by these executive officers in cases of this character, that is, in cases of expulsion and admission. The case of U. S. v. Ju Toy, 198 U. S. 253, upheld the exclusion of the executive officers. It was decided that as a matter of right, a writ of habeas corpus would not lie upon the mere allegation of citizenship. There were three questions certified to the Supreme Court by the Circuit Court of Appeals for this (the Ninth) Circuit. These three questions each used the phrase "in the absence of an abuse of discretion" or words of similar import. In the decision of the Supreme Court the opinion itself uses this same phrase or its legal equivalent. The phrase *"abuse of discretion"* is well defined and abundantly interpreted. In the succeeding case of Chin Yow v. United States, 208 U. S. 8, the Supreme Court went further upon this same line. There are two expressions contained in this latter decision which are variously interpreted. The first follows:

> "And, by way of caution, we may add that jurisdiction would not be established simply by proving that the commissioner and the Department of Commerce and Labor did not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced."

The second expression is here set forth:

> "But, unless and until it is proved to the satisfaction of the judge that a hearing properly so called was denied, the merits of the case are not open, and we may add, the denial of a hearing cannot be established by proving that the decision was wrong."

We believe that these expressions should be interpreted *that if there should have been no abuse of discretion in such action, on their part, then jurisdiction would not be conferred upon the Court.* Some, however, have interpreted these expressions to mean that the immigration officials were at liberty to arbitrarily and without reason believe or disbelieve, regard or disregard evidence as they saw fit, so all-embracing was their power.

The case of United States v. Chin Len, 187 Fed. 544, decided by the Circuit Court of Appeals, Second Circuit, is a case which takes the view we contend for in this matter. The Court, Coxe, C. J., said:

> "The case is much stronger than many of the reported cases where the Chinese persons, seeking entrance, endeavored by the testimony of witnesses to establish their citizenship. In the present case that fact had been judicially determined by the finding of a competent tribunal. The inspector was not justified in arbitrarily disregarding the judgment. He could prove it to be invalid or fraudulently issued, but he could not treat it as a nullity upon mere suspicion and conjecture. He was bound to treat it as valid until its invalidity was established. No relevant question of fact was pre-

sented so far as the commissioner's judgment was concerned, or, indeed, upon the question of identity.

"In cases where the relator does not have a fair hearing the writ of habeas corpus is the proper remedy. Chin Yow v. U. S., 208 U. S. 8, * * * and cases cited. We are constrained to hold, therefore, that the hearing before the inspector and the Department of Commerce and Labor were not full, fair and unbiased, and that the decision refusing the relator admission to the United States was not warranted."

A case which presents a very full review of these decisions is the very recent one of Lewis v. Frick, 189 Fed. 146. Denison, D. J., said:

"(1) It is entirely clear that when the petitioner, in such case, is an alien, and when the right to deport him rests upon a question of fact and when there has been a hearing by the department of that question, such hearing being upon disputed evidence, and the conclusion of the Secretary is based upon some evidence, such conclusion cannot be reviewed by the courts, and if the fact so found does, in law, justify the deportation, it must proceed, however mistaken the conclusion of the department may seem to the court to have been. On the other hand, it is equally clear that errors of law, by the department, may be reviewed by the courts; that an erroneous conclusion of law, made by the department, cannot be sustained by being mistakenly called a conclusion of fact; that a conclusion of fact based upon no evidence tending to support it is of no force; that the hearing at which no evidence is introduced is no hearing; and that the secretary's authority for deportation must be found in the statute."

The following case presents and upholds the legal jurisdiction that a disregarding of evidence may be of such a character as to constitute what is technically known as an abuse of discretion, although in that particular case itself, it was found, that the abuse did not exist, although the legal principle was recognized. Ex parte Lee Kow, 161 Fed. 592, Ray, D. J., said:

> "The decision made was neither arbitrary nor unwarranted, and the evidence was not so conclusive as to warrant a court in saying that there has been an abuse of power or discretion. Unless the court must say this or is forced to this conclusion by the record, it is its duty to dismiss the writ."

A further case is that of Ex parte Korner, 176 Fed. 478, in which Whitson, D. J., said:

> "While the courts are bound by findings duly made by the executive branch in matters of this kind (U. S. v. Jue Toy, 198 U. S. 253; Pearson v. Williams, 202 U. S. 281; Oceanic Nav. Co. v. Stranahan, 214 U. S. 321) they cannot properly refuse relief where upon the admitted facts it appears as a matter of law that the person sought to be deported is not within the inhibition of the statute. Gonzales v. Williams, 192 U. S. 1; Ex parte Watchorn, 160 Fed. 1014. This is the case presented here. Want of jurisdition, and not an erroneous finding, is the state of the record."

We contend that the immigration officials, acting in a quasi judicial capacity, who obviously have not the learning or the experience of the judiciary, are certainly not more gifted than the men of greater learning, and we therefore contend that the funda-

mental legal principles are binding upon them. In the case of Woey Ho v. U. S., 109 Fed. 888, decided by the Circuit Court of Appeals for the Ninth Circuit, the Court said:

> "A Court is not at liberty to arbitrarily and without reason reject or discredit the testimony of a witness upon the ground that he is a Chinaman, an Indian, a negro, or a white man. All people, without regard to their race, color, creed, or country, whether rich or poor, stand equal before the law. It is the duty of the courts to exercise their best judgment, not their will, whim, or caprice, in passing upon the credibility of every witness."

The term "abuse of discretion" is thus denied in Cyc. 1-219:

> "An abuse of discretion is merely a discretion exercised to an end or purpose not justified by and clearly against reason or evidence."

The leading case cited in support of this being Sharon v. Sharon, 75 Cal. 48, in which the Court said:

> "The discretion of the court below is a *legal* discretion, to be reasonably exercised. 'Abuse of discretion' in making such orders does not necessarily imply a wilful abuse, or intentional wrong. In a legal sense, discretion is abused whenever, in its exercise, a court exceeds the bounds of reason,—all the circumstances before it being considered."

Directly in line and further explanatory of this principle we find cited in 14 Cyc., 383 the case of Rothrock v. Carr, 55 Ind. 334-5, in which it is decided:

> "The words 'to make allowances at their discretion', mean to make allowances according to law, at their discretion. They do not mean an arbitrary, uncontrolled, unlimited discretion, contrary to law, or without authority of law; for where there is no law there is no act to do, and therefore, no discretion to be exercised. They mean a legal discretion, not a personal discretion; for to allow the board a personal discretion would give them the power to make law."

We have alleged in subdivision "Fourth h," of the petition which is printed on page 6 of the record, that it was shown conclusively by an overwhelming weight of evidence, that Li A. Sim was not an objectionable alien as alleged in the warrant, and further that there was no evidence produced from which it could fairly, honestly, justly, legitimately or at all be established that she was such an objectionable alien as charged, and that in so finding the officers abused the discretion vested in them. We contend that this allegation should be treated in the light of the decision of the Supreme Court in the case of Chin Yow v. U. S., supra, in which it is recited that the allegations should not be scrutinized as if they were contained in a criminal indictment attacked by means of special demurrer. The demurrer filed in this case is general and not special. If the allegations of the petition were in any wise uncertain, that defect could have been reached by a special demurrer. We have alleged the ultimate facts it is true, because the exigencies of this occasion made it imperative to adopt that course. To have attached

the record in this instance would have rendered it impossible to present the petition to the Court in time to have secured an order to prevent the deportation. We submit in such a case that something must be left to the trial upon the petition, and we should not be called upon to perform impossibilities.

In conclusion we desire to submit that the special question at issue lies deeper, and is, Do the immigration laws operate upon the wives of American citizens domiciled upon American soils? Is it the intent of these laws to separate husbands and wives and exercise its powers of expulsion over the latter, a power at no time popular in this country, and only to be exercised, if at all, when the highest consideration of public welfare imperatively demand it? With great energy we submit that this law cannot be construed so seriously, indeed so tragic in its possible consequences, as is advanced by the contention of the solicitor. What is the object and purpose of the statute under consideration? It is to regulate the admission of aliens who swarm to our shores, seeking a larger life and liberty than the country of their nativity. These laws very wisely make their entry conditioned upon certain things, among which is contained the provision that they must not be found an inmate of a house of prostitution or practicing prostitution within three years. The power to so deport, which was thus reserved, was plainly to check a known evil. But these immigration laws were not enacted to regulate family life in this country, much less to separate a wife

from her American born husband and from her American born child by executive action, because it is imagined and conjectured that she has sinned against her marriage vows and violated a provision of the laws in question. We have earnestly contended in the petition filed in this matter and do contend in this brief, that there is absolutely no evidence from which it could fairly, honestly, justly or legitimately be concluded that Li A. Sim was such an objectionable alien as charged, and we further have alleged that the executive officials of the government in concluding and determining that she was such an alien have abused the discretion invested in them when they arbitrarily, wilfully, capriciously and without reason rejected and discredited the testimony presented upon behalf of the defense, and at the same time prevented her from properly defending herself by refusing to utilize the same power for the production of a most important witness for her, which the immigration officials used to cause the production of their own witnesses. By receiving in evidence over the protests of the defense, hearsay reports and testimony and withhold the name of the person alleged to have made the declaration complained of, thus preventing the detained from attacking the credibility and standing or showing the lack of knowledge of the person alleged to have made the said hearsay remarks, or in fact possibly showing that no such remarks had ever been made. Such a course of proceeding as Li A. Sim was subjected to may be a proper exercise of political power,

as applied to an alien where only the rights of an alien are a fit subject for consideration, but in a case of this kind, where the rights of citizenship of both an American born husband and an American born child are before the tribunal, and entitled to consideration, that then such an executive proceeding is certainly a most illegal exercise of arbitrary power, and one which we sincerely trust the Supreme Court will not uphold.

We finally submit this matter, firm in the belief that this wife may be returned to the arms of her husband and child, both of whom are conceded by the Immigration Authorities to be not only native born citizens of the United States of America, but admitted further that Low Wah Suey is the lawful husband of the said Li A. Sim, and the said Low Ah Sang is the child born to them in lawful wedlock.

Dated, February 26, 1912.

Respectfully submitted,

CORRY M. STADDEN,

Attorney for Appellant.

GEO. A. MCGOWAN,

Of Counsel.

Due service and receipt of a copy of the within is hereby admitted this.....day of March, 1912.

Attorney for Appellee.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

LOW WAH SUEY AND LI A. SIM (MRS. LOW Wah Suey), appellants,
v.
SAMUEL W. BACKUS, COMMISSIONER OF Immigration, Port of San Francisco.
} No. 869.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

SUPPLEMENTAL AND REPLY BRIEF FOR APPELLEE UPON MOTION TO DISMISS OR AFFIRM.

I.

As to whether the record shows the denial of a fair hearing by the immigration authorities.

This case was heard upon demurrer to the petition, and therefore we must look to the petition to determine whether the facts alleged therein bring the case within the jurisdiction of the District Court. In considering the recitals of the petition, the principles of law governing cases of this kind should be borne in mind. In *Tang Tun* v. *Edsell*, decided March 11, 1912, the court said:

> The acts of August 18, 1894, c. 301 (28 Stat., 372, 390), and of February 14, 1903, c. 552 (32 Stat., 825, 828), make the decision of the

> appropriate immigration officer final unless reversed on appeal to the Secretary of Commerce and Labor. And if it does not *affirmatively appear* that the executive officers have acted in some unlawful or improper way and abused their discretion, their finding upon the question of citizenship must be deemed to be conclusive and is not subject to review by the court. (*United States* v. *Ju Toy*, 198 U. S., 253; *Chin Yow* v. *United States*, 208 U. S., 8.)

In *Chin Yow* v. *United States* the court said (208 U. S., 11):

> Of course if the writ is granted the first issue to be tried is the truth of the allegations last mentioned. *If the petitioner was not denied a fair opportunity to produce the evidence that he desired, or a fair though summary hearing,* the case can proceed no farther. Those facts are the foundation of the jurisdiction of the District Court, if it has any jurisdiction at all. * * *

See also, as to the nature and sufficiency of an administrative hearing, *Monongahela Bridge Co.* v. *United States* (216 U. S., 177, 194); *The Japanese Immigrant Case* (189 U. S., 86, 100); Cooley on Taxation (3d ed., p. 59); *King* v. *Mullins* (171 U. S., 404, 429).

The hearing required is "*a fair opportunity to be heard,*" not a judicial trial, with all its formalities and restrictions.

It does not "affirmatively appear" from the petition that the defendant was denied a fair hearing by the immigration authorities. On the contrary, an

examination of the averments of the petition shows that they are wholly without merit.

The first allegation of the petition intended to show a denial of a fair hearing is that "Li A. Sim was refused the right to be represented by counsel during all stages, to wit, at certain stages of the proceedings which were had against her by the immigration authorities of the United States and upon which said proceedings said warrant of deportation was issued." (R., 3–4.) The specific allegation in this connection is that Li A. Sim was refused permission to have counsel present at certain examinations by an immigrant inspector made just after her arrest.

Manifestly, under the principles announced by this court in respect to administrative hearings of this character, an alien has no right to be represented by counsel at all stages of the proceedings leading to his deportation. Referring to the decisions of this court in the *Ju Toy* and *Chin Yow* cases, the Circuit Court of Appeals for the Ninth Circuit, in *re Can Pon* (168 Fed., 479, 483) said:

> * * * In brief, it is the doctrine of these two decisions that an applicant for admission to the United States, detained upon the border thereof by the officials of the Department of Commerce and Labor, is not deprived of his liberty without due process of law if his rights are determined without a judicial trial, and that the decision of the officers is due process of law, with this limitation, that such officers must grant a hearing in good faith, something more than the semblance of a hearing, and must take the testimony pertinent to the

questions involved of such witnesses as may be suggested by the applicant. *This does not mean, and the decisions can not be construed as holding, that the applicant is entitled of right to be present in person or by counsel at the taking of the testimony,* or to be informed of the nature thereof, while it is being taken.

Rule 35 of the regulations issued by the Secretary of Commerce and Labor May 4, 1911, pursuant to section 22 of the immigration act of February 20, 1907, and in force on the dates mentioned in the petition, provides:

> RULE 35. *Deportation, procedure.*—In enforcing sections 20 and 21 of the act approved February 20, 1907, the following instructions regarding applications for warrants of arrest and deportation will be observed:
>
> * * * * *
>
> (b) A full statement must be made in every such application of the facts, supported if practicable by affidavits, which show the presence in the United States of the alien whose arrest and deportation is sought to be in violation of law.
>
> * * * * *
>
> (c) If, thereafter, it appears to the Secretary that the alien concerned is in the United States unlawfully, and that the time within which he may be deported has not expired, a warrant for his arrest shall issue directing that he be taken before the person or persons therein described and there be given a hearing, *at which he shall have full opportunity to show cause,* if any there be, *why he should not be deported.*

During the course of the hearing the alien shall be allowed to inspect the warrant of arrest and all the evidence on which it was issued; and, *at such stage thereof as the person before whom the hearing is held shall deem proper, the alien shall be apprised that he may thereafter be represented by counsel*, and shall be required then and there to state whether he desires counsel or waives the same, and his reply shall be entered on the record. *If counsel be selected he shall be permitted to be present during the further conduct of the hearing, and be permitted to inspect and make a copy of the minutes of the hearing so far as it has proceeded, and to offer evidence to meet any evidence theretofore or thereafter presented by the Government.* At the close of the hearing all of the papers, including the minutes, and any written argument submitted by counsel for the alien, accompanied by recommendations from the examining officer and the officer in charge upon the merits of the case, shall be forwarded to the Department as the record on which to determine whether or not a warrant for deportation shall issue.

If the alien is unable to speak or understand English, an interpreter shall, where practicable, be employed. If it be necessary to employ as such some one outside the Service, authority for payment of a reasonable compensation will, upon request, be granted. If the alien be physically or mentally incapable of testifying, his relatives, friends, or acquaintances, if any, shall be questioned.

* * * * *

> (h) If, after the receipt of the report of such hearing, it shall appear to the satisfaction of the Secretary, from all the evidence, that such alien is in the United States in violation of law and that the time within which he can be deported has not expired, a warrant will be issued for his deportation.

It is not alleged in the petition that the requirements of these regulations were not fully complied with, which was the case in *United States* v. *Williams* (185 Fed., 598). It appears from the petition that Li A. Sim did have counsel at certain stages of the proceedings, and it is to be inferred, in the absence of any statement in the petition to the contrary, as well as from the averments of the petition, that such counsel had full opportunity to inspect and make a copy of the record as far as the case had proceeded "and to offer evidence to meet any evidence theretofore or thereafter presented by the Government."

The allegation that Li A. Sim was questioned against her will and her answers incorporated into the record (R., 3–4) is manifestly immaterial, as there can be no question as to the right of the immigration authorities to examine aliens supposed to be unlawfully in the United States. The mere fact that she was an unwilling witness does not indicate any abuse of authority, nor the fact that her answers were incorporated into the record.

It is next charged that the Secretary and the Commissioner of Immigration "refused to take any steps to direct or, if necessary, enforce the attendance of a

material witness to testify on behalf of said detained person, although requested by counsel so to do." (R., 4.) The immigration officers have no power to compel the attendance of witnesses, but even if they had, there was no duty resting upon them to secure the attendance of witnesses on behalf of the alien. *A fair opportunity to the alien to be heard* is all that the law requires of the immigration officers in this respect. It appears that Li A. Sim was represented by counsel, and it is not claimed that she or her counsel did not have an opportunity to summon the witness referred to.

That certain alleged hearsay evidence was considered by the immigration officers (R., 4, 5) is also immaterial, administrative proceedings not being subject to the limitations of a judicial trial. Besides, the nature of such evidence is not set forth or the truth thereof denied.

The allegation that "said pretended hearing or hearings before the said Secretary of Commerce and Labor were in fact no hearings upon the merits of the case" (R., 5) is a mere conclusion of law, no facts being set forth in support of the contention.

Finally, it is alleged (R., 5–6) that rule 35, "B," "E," and "H" of the regulations promulgated by the Secretary of Commerce and Labor May 4, 1911, are—

> "illegally issued and issued without authority and in breach of trust of said officials, in this that said rules are unreasonable and unjust and contrary and inconsistent with law, and

> further that they do not protect the alien immigrants migrating to the United States from fraud and loss," * * *.

These regulations are set forth above. On their face they plainly afford petitioner full opportunity to be heard in person and by counsel. Furthermore, the allegations of the petition in respect to them are insufficient, in that it is not specifically pointed out wherein they are material.

The petition is also defective in that it is not accompanied by copies of the proceedings before the immigration authorities which are attacked, or the essential parts thereof. (*Craemer* v. *Washington State*, 168 U. S., 124, 129; *Terlinden* v. *Ames*, 184 U. S., 270, 279; *Haw Moy* v. *North*, 183 Fed., 89.)

In *Craemer* v. *Washington State*, supra, the court (pp. 128–129) said:

> * * * The general rule is undoubted that if the detention is claimed to be unlawful by reason of the invalidity of the process or proceedings under which the party is held in custody, copies of such process or proceedings must be annexed to or the essential parts thereof set out in the petition, and mere averments of conclusions of law are necessarily inadequate. (*Whitten* v. *Tomlinson*, 160 U. S., 231; *Kohl* v. *Lehlback*, 160 U. S., 293; Church on Habeas Corpus, 2d ed., sec. 91, and cases cited.)

The reasons given in the petition for not attaching a copy of the proceedings are that the "record is

too voluminous"; that it "would burden this petition and cloud the issue"; that "petitioner has not in his possession the *entire* record of the proceedings, and that he is unable to secure the same in time to file with this petition," and that the Commissioner of Immigration can produce a copy. (R., 6, 7.) These statements are manifestly insufficient to excuse the petitioner from setting forth the substantial parts of the proceedings alleged to be unlawful. Practically all the averments of the petition intended to show an abuse of authority are either mere conclusions of law or too indefinite to advise the court as to matters of fact.

In any event, as above pointed out, the allegations of the petition intended to show that a fair hearing was not accorded Li A. Sim, taken at their face value, do not indicate any unfair or improper action on the part of the immigration officials.

The allegations in this case are fundamentally different from those in the *Chin Yow* case (208 U. S., 8, 11). There it was charged that the petitioner was prevented by the immigration officials from obtaining testimony, including that of named witnesses, and that, had petitioner been given a proper opportunity, he could have produced overwhelming evidence that he was born in this country. There is no allegation here of any denial of opportunity to produce testimony or to secure the attendance of witnesses.

II.

Under the laws of the United States, a Chinese woman does not become a citizen of the United States by virtue of her marriage to a citizen, and she is none the less subject to the operation of the immigration laws.

Section 1994 of the Revised Statutes provides:

> SEC. 1994. Any woman who is now or may hereafter be married to a citizen of the United States, *and who might herself be lawfully naturalized*, shall be deemed a citizen.

It is settled that the words "who might herself be lawfully naturalized," in this section and in the act of February 10, 1855 (10 Stat., 604), from which it was taken, refer to the *class* or *race* who might be lawfully naturalized. (*Kelly* v. *Owen*, 7 Wall., 496; *Burton* v. *Burton*, 1 Keyes, N. Y., 359; *Leonard* v. *Grant*, 5 Fed., 11; *Kane* v. *McCarthy*, 63 N. C., 299; *United States* v. *Kellar*, 13 Fed., 82.)

The naturalization laws were originally limited to "any alien, being a free white person." (Act of Mar. 26, 1790, 1 Stat., 103; act of Jan. 29, 1795, 1 Stat., 414; act of Apr. 14, 1802, 2 Stat., 153; act of Mar. 26, 1804, 2 Stat., 292; act of Mar. 22, 1816, 3 Stat., 258; act of May 26, 1824, 4 Stat., 69; act of May 24, 1828, 4 Stat., 310.) They were later extended to aliens of African nativity and to persons of African descent. (Act of July 14, 1870, 16 Stat., 254; act of Feb. 18, 1875, 18 Stat., 318; sec. 2169, R. S.)

A native of China is not a "white person" within the meaning of the term as used in the naturalization

laws (*In re Ah Yup*, 5 Sawy., 155), and such statutes have never been made applicable to persons of the Chinese race.

As stated by this court in *Fong Yue Ting* v. *United States* (149 U. S., 698, 716):

> * * * Chinese persons not born in this country have never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws.

Counsel assert that Li A. Sim is at least a citizen of the State of California, if not of the United States (R., p. 3; brief, pp. 18, 19), but cite no authorities in support of that contention. It is enough in response to refer to the act of May 6, 1882 (22 Stat., 58, 61), section 14, expressly prohibiting the admission of Chinese to citizenship, and to *Chirac* v. *Chirac* (2 Wheat., 259), *United States* v. *Wong Kim Ark* (169 U. S., 649, 701), and *Zartarian* v. *Billings* (204 U. S., 170, 173). In the *Wong Kim Ark* case the court said (p. 701):

> The power, granted to Congress by the Constitution, "to establish an uniform rule of naturalization," was long ago adjudged by this court to be vested exclusively in Congress.

That marriage to a citizen does not prevent the deportation of an alien woman for a violation of the immigration laws, is determined by *Yeung How* v. *North*, No. 524 of the present term, which was dismissed by the court on October 23, 1911, for want of jurisdiction.

In the *Yeung How* case, as in this, the warrant of deportation recited, as ground for deportation, that

she had been found an inmate of a house of prostitution. It was contended that, because of her marriage to an American-born Chinaman, she was not subject to deportation under the acts providing for the deportation of aliens. From a judgment of the Circuit Court dismissing a writ of habeas corpus an appeal was taken direct to this court.

The order of this court dismissing the appeal in the Yeung How case was as follows:

> Dismissed for the want of jurisdiction. (*Farrell* v. *O'Brien*, 199 U. S., 100; *David Kaufman & Sons Company* v. *Smith*, 216 U. S., 610; *Fong Yue Ting* v. *United States*, 149 U. S., 698, 716; section 14 of the act of May 6, 1882, 22 Stat., 61.)

The first two cases cited (*Farrell* v. *O'Brien* and *David Kaufman & Sons Company* v. *Smith*) held that to give this court jurisdiction on a direct appeal from a Circuit or District Court the constitutional question alleged to be involved must be real and substantial, and not a mere claim in words. *Fong Yue Ting* v. *United States*, also cited, is the Chinese-exclusion case, the reference being to the page where the court said that "Chinese persons not born in this country have never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws."

It is of no consequence that the American-born husband of Yeung How had died before she was ordered deported. If she had become a citizen by virtue of the marriage, that citizenship status would have continued after the death of her husband. In

Kelly v. *Owen* (7 Wall., 496) the widow of a naturalized citizen, she being a person who might be lawfully naturalized, was held to be a citizen. (See also 15 Op. A. G., 599.)

In the case of *Hoo Choy* v. *North* (183 Fed., 92), No. 604 on the docket of this court for the present term, exemption from deportation as an alien was also claimed on her behalf, as the wife of a citizen, but the claim was denied by the Circuit Court of Appeals for the Ninth Circuit, affirming the judgment of the Circuit Court dismissing the writ, and on October 23, 1911, this court denied a petition for a writ of certiorari.

III.

The alien wife of a citizen who becomes an inmate of a house of prostitution is within both the letter and the spirit of the immigration laws.

Appellants rely on *Gonzales* v. *Williams* (192 U. S., 1), where it was held that the immigration laws did not apply to natives of Porto Rico, because they owed allegiance to the United States, and those laws were limited to aliens. But the marriage of Li A. Sim to Low Wah Suey did not change her political status with respect to this country. (*Shanks* v. *Dupont*, 3 Pet., *242, *246, and cases cited; *White* v. *White* 2 Met. (Ky.), 185, 191; *Sutliff* v. *Forgey*, 1 Cowen 89; 5 Cowen, 713; *Mick* v. *Mick*, 10 Wend., 379; *Connolly* v. *Smith*, 21 Wend., 59.)

If Li A. Sim had conducted herself properly, she would not, although an alien, have come within the operation of the immigration laws. But when she

went or was put into a house of prostitution, it was not only in disregard of her duties as a wife, but in defiance of the laws of this country. If the enforcement of the law will work a hardship upon the husband and child, it is because its mandates have been deliberately disregarded. Assuming that a citizen has the right to bring in a wife, although she be an alien, this does not authorize her to engage in immoral practices in violation of the restrictions placed by Congress upon all aliens.

But the fact that the application of the law may produce hardship and injustice is immaterial. This plea was made in *Zartarian* v. *Billings* (204 U. S., 170), where the alien child of a naturalized citizen, afflicted with trachoma, was held properly excluded by the immigration officials. It was there urged that the application of the law to such a case seemed harsh, but this court said (pp. 175–176):

> As this subject is entirely within Congressional control, the matter must rest there; it is only for the courts to apply the law as they find it.

This case is decisive of appellant's contention as to the proper interpretation of the immigration laws. It makes no difference that in that case the alien was being excluded rather than expelled, the power to expel not being different from that to exclude. (*Fong Yue Ting* v. *United States*, 149 U. S., 698, 707, 713.)

In re Thakla Nicola (184 Fed., 322) has no application because the women referred to therein belonged to a race that might be lawfully naturalized.

United States v. *Mrs. Gue Lim* (176 U. S., 459) and *Tsoi Sim* v. *United States* (116 Fed., 920) are also to be distinguished. The purpose of the Chinese exclusion laws is to protect American labor, hence the residence here of the wife of a Chinese merchant did not come within their purview. But the purpose of the immigration act in excluding alien prostitutes is to protect the public health and morals, and an alien woman who engages in such practices is as much within the purpose of the act when she is the wife of a citizen as when she is not.

It is respectfully submitted that the appeal should be dismissed for want of jurisdiction or the judgment of the District Court affirmed.

WILLIAM R. HARR,
Assistant Attorney General.

Section 3 of the immigration act of February 20, 1907 (34 Stat., 898, 900), as amended by the act of March 26, 1910 (36 Stat., 263, 265), provides:

> SEC. 3. * * * *Any alien who shall be found an inmate of* or connected with the management of *a house of prostitution* or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States and *shall be deported in the manner provided by sections twenty and twenty-one of this act.* * * *

Section 20 (34 Stat., 904) provides:

> SEC. 20. That any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing, shall, upon the warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States. * * *

Section 21 (34 Stat., 905) provides:

> SEC. 21. That in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this Act, or that an alien is subject to deportation under the provisions of this Act or of any law of the United States, he shall cause such alien within the period of three years after landing or entry therein to be taken into custody and returned to the country whence he came, as provided by section twenty of this Act, * * *.

○

LOW WAH SUEY *v.* BACKUS, COMMISSIONER OF IMMIGRATION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 869. Argued April 30, 1912.—Decided June 7, 1912.

Congress may pass laws forbidding aliens or classes of aliens from coming within the United States and may provide for their expulsion; it may also devolve upon the executive department or subordinate officers the right and duty of carrying out the law. *Wong Wing* v. *United States*, 163 U. S. 228.

Hearing on proceedings for deporting aliens before executive officers may be made conclusive when fairly conducted. One attacking such proceedings in the courts must show that the officers conducting them were manifestly unfair and abused the discretion committed to them. Otherwise the order of executive officers within the authority of the statute is final.

When a case is decided upon demurrer the question is whether a case was made upon those allegations which are well pleaded and not upon those that are mere conclusions of law.

A preliminary examination of an alien without counsel is permitted by the statute; and if at subsequent stages of the proceedings the alien has counsel there is no denial of right.

The Alien Immigration Acts of 1907 and 1910 do not give authority to the Commissioner or Secretary to issue process to compel attendance of witnesses on behalf of the alien held for deportation. The alien is not denied rights if the witnesses produced on his behalf are heard.

The Act of 1907 is not unconstitutional as denying one held for deportation of his liberty without due process of law because it does not give the immigration officers power to compel his witnesses to appear.

This court cannot pass on an objection that hearsay evidence was received and not communicated to the alien where the record does not disclose the nature of the testimony.

This court is not prepared to declare the rules of the Secretary of Commerce and Labor in regard to proceedings for deportation of aliens to be so arbitrary as to deprive the alien of a fair hearing and

beyond the power of the Secretary to make under the authority given by the statute. The statute expressly provides for a summary hearing.

As a general rule in *habeas corpus* proceedings, a copy of the record of the proceedings attacked is required, *Craemer* v. *Washington*, 168 U. S. 124, and if petitioner cannot comply with the rule by annexing a complete copy he should comply with it so far as it is within his power.

The Alien Immigration Act in terms applies to all aliens.

An alien is one born out of the jurisdiction of the United States and who has not been naturalized under its Constitution and laws.

The effect of the marriage of an alien woman to a male citizen of the United States is not determined by the common law. That matter is regulated by statute.

Under § 1994, Rev. Stat., a woman who could be naturalized becomes by her marriage to a citizen of the United States a citizen herself. See *Kelly* v. *Owen*, 7 Wall. 496.

Quære, whether a woman, incapable under the laws of the United States of being naturalized, can become a citizen of the United States by marriage to a citizen thereof.

An alien who has become a citizen of one of the States, can be excluded under the Alien Immigration Act if within a class prohibited to enter.

All statutes must be given a reasonable construction, with a view of effecting the object and purposes thereof.

The object of the provisions of the Alien Immigration Acts of 1907 and 1910, providing for deportation of prostitutes, was to prevent the introduction and keeping in this country of women of the prohibited class; and even if a woman married to a citizen might be permitted to enter if she does not belong to that class, if she is found violating the statute by being in a house of prostitution she becomes subject to the deportation provisions thereof, notwithstanding her marriage to a citizen.

Where Congress has power to pass an act and its provisions are plain, the court must apply it even in a hard case.

If a statute should be amended to prevent its operation in particular cases that result can only be accomplished by an exercise of legislative authority.

THE facts, which involve the construction of the Alien Immigration Act of February 20, 1907, and the right thereunder of the Government to deport the alien Chinese wife

of a Chinese citizen found within three years after entering this country in a house of prostitution, are stated in the opinion.

Mr. Corry M. Stadden, with whom *Mr. George A. McGowan* was on the brief, for appellants:

This court has jurisdiction. In *Yeung How* v. *North*, 223 U. S. 705, dismissed *per curiam* this term, there had been a trial on the main issues, and petitioner was a widow. The cases are dissimilar. The statute should receive a reasonable construction. *United States* v. *Kirby*, 7 Wall. 482.

In this case there is a husband and a child of the marriage. Even if the marriage left appellant an alien she was not an alien within the meaning of the Alien Immigration Acts. *Gonzales* v. *Williams*, 192 U. S. 1. *Re Thakla Nicola*, 184 Fed. Rep. 322.

As to the status of the Chinese wife of an American-born citizen, see *Tsoi Sim* v. *United States*, 116 Fed. Rep. 925.

The fact that appellant could not be naturalized does not prevent her from becoming a citizen by marrying a citizen. See T. D. Jan.–Dec., 1900, No. 22551, construing § 1994, Rev. Stat.

Naturalization is the only right withheld. Marriage and its legitimate effects are not affected.

Appellant's constitutional rights were invaded by the proceeding. *United States* v. *Williams*, 185 Fed. Rep. 598; *Redfern* v. *Halpert*, 186 Fed. Rep. 150.

The petition states why the record is not annexed thereto. It was too voluminous in the first place and it was inaccessible to the petitioner. The time was brief as the order was to deport forthwith. See *Chin Yow* v. *United States*, 208 U. S. 8.

As to what is abuse of discretion and arbitrary action on the part of the inspector and the Secretary, see *United*

States v. *Chin Len*, 187 Fed. Rep. 544; *Lewis* v. *Frick*, 189 Fed. Rep. 146; *Ex parte Lee Kow*, 161 Fed. Rep. 592; *Ex parte Korner*, 176 Fed. Rep. 478; *Woey Ho* v. *United States*, 109 Fed. Rep. 888.

An abuse of discretion is merely a discretion exercised to an end or purpose not justified by and clearly against reason or evidence. *Sharon* v. *Sharon*, 75 California, 48; 1 Cyc. 219; 14 Cyc. 383; *Rothrock* v. *Carr*, 55 Indiana, 334.

Mr. Assistant Attorney General Harr, with whom *The Solicitor General* was on the brief, for appellee:

It does not affirmatively appear from the petition that appellant was denied a fair hearing by the immigration authorities, which is the foundation of the jurisdiction of the District Court. *United States* v. *Ju Toy*, 198 U. S. 253; *Chin Yow* v. *United States*, 208 U. S. 8; *Tang Tun* v. *Edsell*, 223 U. S. 673.

Under the principles announced by this court in respect to administrative hearings, an alien has no right to be represented by counsel through all stages of the proceedings leading to his deportation. *In re Can Pon*, 168 Fed. Rep. 479, 483.

The regulations of the Secretary of Commerce and Labor for the enforcement of the Immigration Act give the alien full opportunity to show cause and to be represented by counsel from a certain point in the proceedings. It is not alleged that these regulations were not complied with.

The fact that the alien was an unwilling witness does not indicate any abuse of authority, nor the fact that her answers were incorporated into the record.

The immigration officers had no power to compel the attendance of witnesses.

That certain alleged hearsay evidence was considered by the immigration officers is immaterial, administrative

proceedings not being subject to the limitations of a judicial trial; besides, the nature of such evidence is not set forth or the truth thereof denied.

The allegation that the hearings before the Secretary were not in fact hearings upon the merits is a mere conclusion of law, no facts being set forth in support of the contention.

The petition is defective in that it is not accompanied by copies of the proceedings before the immigration authorities which are attacked, or the essential parts thereof. *Craemer* v. *Washington*, 168 U. S. 124, 129; *Terlinden* v. *Ames*, 184 U. S. 270, 279; *Haw Moy* v. *North*, 183 Fed. Rep. 89.

The allegations in this case are fundamentally different from those in the *Chin Yow Case*, 208 U. S. 8, 11. There is no allegation here of any denial of opportunity to produce testimony or to secure the attendance of witnesses.

Under the laws of the United States, a Chinese woman does not become a citizen of the United States by virtue of her marriage to a citizen. Section 1994, Rev. Stat., only confers citizenship upon a woman married to a citizen of the United States "who might herself be lawfully naturalized." These words here and in the act of February 10, 1855, 10 Stat. 604, from which it was taken, refer to the class or race who might be lawfully naturalized. *Kelly* v. *Owen*, 7 Wall. 496; *Burton* v. *Burton*, 1 Keyes (N. Y.) 359; *Leonard* v. *Grant*, 5 Fed. Rep. 11; *Kane* v. *McCarthy*, 63 No. Car. 299; *United States* v. *Kellar*, 13 Fed. Rep. 82.

A native of China is not a "white person" within the meaning of the term as used in the naturalization laws, *In re Ah Yup*, 5 Sawy. 155, and such statutes have never been made applicable to persons of the Chinese race. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 716.

Marriage to a citizen does not prevent the deportation of an alien woman for a violation of the immigration laws. *Yeung How* v. *North*, 223 U. S. 705. See, also, *Hoo Choy*

v. *North*, 183 Fed. Rep. 92, in which certiorari was denied by this court.

It is of no consequence that the American-born husband of Yeung How had died before she was ordered deported. If she had become a citizen by virtue of the marriage, that citizenship status would have continued after the death of her husband. *Kelly* v. *Owen*, 7 Wall. 496; 15 Op. A. G. 599.

The alien wife of a citizen who becomes an inmate of a house of prostitution is within both the letter and the spirit of the immigration laws. *Gonzales* v. *Williams*, 192 U. S. 1, has no application, because in that case the allegiance of natives of Porto Rico had been transferred to the United States.

The marriage of Li A. Sim to Low Wah Suey did not change her political status with respect to this country. *Shanks* v. *Dupont*, 3 Pet. *242, *246, and cases cited; *White* v. *White*, 2 Met. (Ky.) 185, 191; *Sutliff* v. *Forgey*, 1 Cowen, 85; 5 Cowen, 713; *Mick* v. *Mick*, 10 Wend. 379; *Connolly* v. *Smith*, 21 Wend. 59.

If Li A. Sim had conducted herself properly, she would not, although an alien, have come within the operation of the immigration laws. Assuming that a citizen has the right to bring in a wife, although she be an alien, this does not authorize her to engage in immoral practices in violation of the restrictions placed by Congress upon all aliens.

It cannot be contended that the Immigration Act does not apply to the resident alien wife of a citizen because domiciled aliens have a quasi-citizenship according to certain authorities on international law (dissenting opinion in *Fong Yue Ting* v. *United States*, 149 U. S. 735), as this would exclude from its operation all domiciled aliens, and § 3 of the act is expressly directed at alien women or girls who become inmates of houses of prostitution after their entry into the United States. The only other ground of exemption is that the statute was not intended to disturb

the family relations; but this contention was overruled in *Zartarian* v. *Billings*, 204 U. S. 170, where the child of a naturalized citizen afflicted with trachoma was held not entitled to admission.

In re Nicola, 184 Fed. Rep. 322, has no application, because the women referred to therein belonged to a race that might be lawfully naturalized.

United States v. *Mrs. Gue Lim*, 176 U. S. 459, and *Tsoi Sim* v. *United States*, 116 Fed. Rep. 920, are also to be distinguished. The purpose of the Immigration Act in excluding alien prostitutes is to protect the public health and morals, and an alien woman who engages in such practices is as much within the purpose of the act when she is the wife of a citizen as when she is not.

MR. JUSTICE DAY delivered the opinion of the court.

Li A. Sim, a Chinese woman, wife of Low Wah Suey, was ordered to be deported by the Department of Commerce and Labor, a hearing having been had before an immigration inspector at San Francisco and appeal taken to the Secretary of Commerce and Labor under the provisions of the act of Congress approved February 20, 1907 (34 Stat. 898, c. 1134), the warrant for deportation reciting that she had landed at the port of San Francisco, California, on the fifteenth of April, 1910, and had been found in the United States in violation of the act of February 20, 1907, as amended by the act approved March 26, 1910 (36 Stat. 263, c. 128), namely, that she was an alien, found as an inmate of a house of prostitution within three years subsequent to her entry into the United States.

The statutes of the United States under which the proceedings were had and the warrant issued are principally § 3 of the act of March 26, 1910, amending § 3 of the act of February 20, 1907, and §§ 20 and 21 of the latter act. Section 3 provides: ". . . Any alien who shall be found

an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by sections twenty and twenty-one of this Act. . . ." Section 20 provides that any alien who enters the United States in violation of law, etc., shall, upon the warrant of the Secretary of Commerce and Labor, be deported to the country whence he came within three years after his entry into the United States. Section 21 provides that the Secretary of Commerce and Labor, upon being satisfied that an alien is found in the United States in violation of the act or is subject to deportation under the act or any law of the United States, shall cause such alien to be taken into custody and returned to the country whence he came within three years after landing or entry in the United States. The act also provides for a hearing before an inspector or commissioner under rules prescribed by the Secretary of Commerce and Labor. The inspector or commissioner reports his conclusions and the testimony on which they are based to the Secretary, who, after examination, may order a release or deportation, as in his judgment the case may warrant. Under this statute the Secretary of Commerce and Labor has provided certain instructions and rules, some of which will be hereinafter noticed.

That Congress may pass laws forbidding aliens or classes of aliens from coming within the United States and may provide for the expulsion of aliens or classes of aliens from

its territory, and may devolve upon the executive department or subordinate officials the right and duty of identifying and arresting such persons, is settled by previous decisions of this court. *Wong Wing* v. *United States*, 163 U. S. 228, 237.

A series of decisions in this court has settled that such hearings before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings it must be shown that the proceedings were manifestly unfair, that the action of the executive officers was such as to prevent a fair investigation or that there was a manifest abuse of the discretion committed to them by the statute. In other cases the order of the executive officers within the authority of the statute is final. *United States* v. *Ju Toy*, 198 U. S. 253; *Chin Yow* v. *United States*, 208 U. S. 8; *Tang Tun* v. *Edsell*, 223 U. S. 673.

In the case of *Yeung How* v. *North*, 223 U. S. 705, decided at the present term, this court dismissed the appeal in a *per curiam* opinion. An examination of that case shows that it was in all respects like the case at bar, so far as the status of Yeung How, the person deported, is concerned, she being a Chinese woman who had married a Chinaman of American birth, except that the husband of Yeung How was dead, so that at the time of the deportation order she was the widow of an American citizen. An examination of the briefs in that case show that it was contended in behalf of the petitioner that the statute and procedure thereunder, the case being one of the deportation and not of the admission of an alien, deprived the petitioner of due process of law under the Constitution of the United States, inasmuch as there was no provision by which the petitioner could procure or compel the attendance of witnesses, and because the statute made no provision for the punishment of a witness giving false

testimony against the detained person, and because such alien, lawfully within this country could not be deported without a hearing of a judicial character. Notwithstanding these alleged infractions of constitutional right, this court dismissed the appeal.

In the case now under consideration, the proceedings and order for deportation were attacked by a writ of *habeas corpus* filed in the District Court of the United States for the Northern District of California. The case was decided upon demurrer, and the question, therefore, arises whether, upon the allegations well pleaded, a case was made for the discharge of the prisoner. The petition abounds in conclusions of law. We will examine such of the allegations advanced as a basis for the relief sought as state facts. The petitioner, Low Wah Suey, who instituted the proceedings in behalf of his wife, Li A. Sim, alleged that he was a resident of the city and county of San Francisco, California, born in the United States of parents regularly domiciled therein; that consequently he is a citizen of the United States and of the State of California; that he was married to Li A. Sim on the tenth of March, 1910, in Hong Kong, a British province, and that they have since been and were at the date of the filing of the petition husband and wife; that they entered the United States on the fifteenth of September, 1910; that the entry was lawful, and that until the commencement of proceedings for deportation they continuously lived and cohabited together as husband and wife; that they had a son, Low Sang, born to them on February 9, 1911, at their home in the State of California; and that both Low Wah Suey and Li A. Sim are citizens of the State of California. The arrest and hearing before the Commissioner of Immigration at the port of San Francisco are recited, as is the approval of the Secretary of Commerce and Labor and the warrant for deportation. It is further alleged that Li A. Sim was refused the right to be repre-

sented by counsel during all stages of the preliminary proceedings, and was examined without the presence of her counsel and against her will by the immigration officer at the port of San Francisco, and before she had been advised of her right to counsel and before she was given an opportunity of securing bail, and that afterwards an examination was conducted by the immigration officer, acting under the orders of the Commissioner of Immigration, at which she was questioned by the immigration inspector against her will and without the presence of counsel, who was refused permission to be present, and that at certain stages of the proceedings she was refused the right to consult with counsel. This objection, in substance, is that under examination before the inspection officer at first she had no counsel. Such an examination is within the authority of the statute, and it is not denied that at subsequent stages of the proceedings and before the hearing was closed or the orders were made she had the assistance and advice of counsel.

It is next averred that the Secretary of Commerce and Labor and the Commissioner of Immigration refused to take the necessary steps to enforce the attendance of witnesses to testify on behalf of the petitioner, although it is said that the immigration officers did use their power to procure witnesses to testify against her; and that had such witnesses as she wished been produced, she says, upon information and belief, that the testimony in the record would have been such as to require a different order by the Secretary of Commerce and Labor, and sufficient to prevent the issuing of the order of deportation. The statute does not give authority to issue process to compel the attendance of witnesses. It does not appear from the record that any witnesses offered on behalf of the petitioner were not heard or that anything was done to prevent the production of such witnesses, and the nature and character of the proposed testimony offered is not set forth. This

objection was urged in the *Yeung How* v. *North* case, and the lack of power to compel witnesses by the immigration officer was alleged as depriving the appellant of due process of law. This court dismissed the case upon reference to other cases which indicate its view that no constitutional right was thereby taken from the petitioner. The former cases have sustained the right to provide for such hearing, and nothing was done to prevent the production of such witnesses as the petitioner might have seen fit to produce.

It is further alleged that the executive officer acted in bad faith and arbitrarily in receiving a report based on hearsay information, the name of the informer being withheld from Li A. Sim and no opportunity being given her to offset or disprove such hearsay evidence. The nature and character of this testimony is not set forth, and we have no means of knowing it was not such as might properly have been considered in such a hearing.

It is alleged that the rules of the Secretary of Commerce and Labor are arbitrary and illegal, particularly certain sections of Rule 35. From these rules, it appears, that, while provision is made for an examination in the absence of counsel, it is provided that a hearing shall be had at which the alien shall have full opportunity to show cause why he should not be deported, and that, at such stage of the proceedings as the person before whom the hearing is held shall deem proper, the alien shall be apprised that he may thereafter be represented by counsel, who shall be permitted to be present at the further conduct of the hearing, to inspect and make a copy of the record of the hearing so far as it has proceeded and to meet any evidence that theretofore has been or may thereafter be presented by the Government, and it is further provided that all the papers, including the minutes and any written argument submitted by counsel, together with the recommendations, upon the merits, of the examining officer and the officer in charge shall be forwarded to the Department as

the record on which to determine whether or not a warrant for deportation shall issue. Considering the summary character of the hearing provided by statute and the rights given to counsel in the rules prescribed, we are not prepared to say that the rules are so arbitrary and so manifestly intended to deprive the alien of a fair, though summary, hearing as to be beyond the power of the Secretary of Commerce and Labor under the authority of the statute.

The petition would be much more satisfactory if the general rule had been complied with and the proceedings had before the immigration officer had been set out. As a general rule in *habeas corpus* proceedings a copy of the record of the proceedings attacked is required. *Craemer* v. *Washington*, 168 U. S. 124, 128, 129. The reasons given for failure to comply with this rule, as stated in the petition, are that the record is too voluminous to be made a part thereof, that to incorporate a copy of the entire proceedings would "burden the petition and cloud the issue," that the petitioner was not in the possession of the entire record and was unable to secure it in time to file it with his petition, and that the Commissioner of Immigration had a copy of the record which he could produce with the body of Li A. Sim. It does not appear that a copy of the essential part of the proceedings was not in the possession of the petitioner or could not be had, and so far as it was within his power he should have complied with the rule.

An examination of the petition, omitting such allegations as are merely conclusions or charges of bad faith, we think, justified the court below in sustaining the demurrer, provided that, at the time of the arrest and order of deportation, Li A. Sim was an alien within the meaning of the statute which provides for the deportation of any alien found as an inmate of a house of prostitution or practicing prostitution after entering the United States, when the

proceeding shall be instituted within three years from the entry of such alien into this country.

The statute in terms applies in general to all aliens. An alien has been defined to be "one born out of the jurisdiction of the United States, and who has not been naturalized under their Constitution and laws." 2 Kent, 50; 1 Bouvier Law Dictionary, 129. Within this general description Li A. Sim would clearly come, unless her status was changed, as is alleged, by marriage to a Chinaman of American birth, who is consequently an American citizen. It is unnecessary to discuss the effect of such marriage at common law, as in this country the matter is regulated by statute. Section 1994 of the Revised Statutes provides:

"Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

This section is said to originate in the act of Congress of February 10, 1855 (10 Stat. 604, c. 71), which in its second section provided "that any woman, who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen." This section was construed in *Kelly* v. *Owen*, 7 Wall. 496, and was held to confer the privileges of citizenship upon women married to citizens of the United States, if they were of the class of persons for whose naturalization the acts of Congress provide. So under the present statute, when a woman who could be naturalized marries a citizen of the United States, she becomes by that act a citizen herself.

Li A. Sim was a Chinese person not born in this country, and could not become a naturalized citizen under the laws of the United States. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 716; Act of May 6, 1882 (22 Stat. 58, 61, § 14, c. 126). Being incapable of naturalization herself, although the wife of a Chinaman of American birth, she remained an alien and subject to the terms of the act, un-

less it can be successfully maintained that she was not within the intent and purpose of the act when it is properly construed. In this behalf the argument of her counsel is that Congress did not intend, notwithstanding the terms of the act in question, to make it applicable to a Chinese woman married to an American citizen lawfully domiciled within this country.

To sustain this position *Gonzales* v. *Williams*, 192 U. S. 1, is cited by counsel. In that case this court held that Isabella Gonzales, an inhabitant of Porto Rico at the date of the proclamation of the treaty of 1898, could not be prevented from landing and detained by an immigration inspector as an alien immigrant in order that she might be returned to Porto Rico, it appearing likely that she might become a public charge. This court held that she had been made by act of Congress a citizen of Porto Rico; that she was within the class absolved from all previous allegiance to the Spanish Government; that the act excluding alien immigrants was intended to apply to foreigners as respects this country, to persons owing allegiance to a foreign government and citizens or subjects thereof; that citizens of Porto Rico whose permanent allegiance was due to the United States and who lived in the peace of its dominion, the organic law of whose domicile was enacted by the United States and enforced through its officials, could not be considered alien immigrants within the meaning of the exclusion act of March 3, 1891 (26 Stat. 1084, c. 551). From a reading of that case it is manifest that this court did not think that Congress intended to exclude those over whom it had acquired jurisdiction under the Treaty of Paris and the subsequent legislation of Congress, whose sole allegiance was to this country and who were not aliens to it in any just sense of the term.

The case of *United States* v. *Mrs. Gue Lim*, 176 U. S. 459, is also relied upon. We think that case is readily distinguished from the one at bar. It was there held, that

the wife of a Chinese merchant entitled by treaty to come into this country and dwell here could not be required to furnish the certificate required by the statute from Chinese persons other than laborers, as such construction of the statute would lead to absurd results in requiring a certificate from the wife of a merchant in regard to whom it would be impossible to give the particulars which the statute required should be stated in the certificate; that the real purpose of the statute was not to prevent the persons named, who under the second article of the treaty had the right to come into this country, from entering, but was to prevent Chinese laborers from entering under the guise of being one of the classes permitted to enter. "To hold that a certificate is required in this case," the court said, at p. 468, "is to decide that the woman [the wife of a Chinese merchant] cannot come into the country at all, for it is not possible for her to comply with the act, because she cannot in any event procure the certificate even by returning to China. She must come in as the wife of her domiciled husband or not at all," and it was held that the act was never intended to exclude the wife and minor children of a merchant lawfully entitled to enter.

It is argued that, being a citizen of California, the petitioner and her husband are to be protected from the operation of the act. Assuming that they are citizens of California, there is nothing in that fact to prevent the officers of the United States from exercising the authority conferred upon them to exclude or deport aliens or others who are such within the terms of the Federal law.

We find nothing in the previous decisions of this court which exempts Li A. Sim from the operations of the statute as an alien person. True it is, as contended, that all statutes must be given a reasonable construction, with a view to effecting the object and purposes thereof. It was the manifest purpose of Congress in passing this law to prevent the introduction and keeping in the United States

of women of the prohibited class. The object of the act was to exclude alien prostitutes, or, if they entered and were found violating the statute within the period prescribed, to return them to the country whence they came. A married woman may be as objectionable as a single one in the respects denounced in the law. There is nothing in the terms of the act showing the congressional purpose to exclude from its provisions an alien who had previously married or who might marry an American citizen. Indeed, if this construction were adopted, the marriage of such alien to a countryman of American citizenship who might be ignorant of the conduct of the alien or willing to condone it, would afford an easy means of evading the statute. In the present case, in view of the finding of the immigration officer, approved by the Secretary of Commerce and Labor, it must be taken as true that Li A. Sim, notwithstanding her marriage relation, was found in a house of prostitution in violation of the statute. This situation was one of her own making, and, conceding her right to come into the United States and dwell with her husband because of his American citizenship, it is obvious that such right could have been retained by proper conduct on her part and was only lost upon her violation of the statute, she, being an alien, thereby forfeiting her right to longer remain in this country. If it be admitted that the present is a hard application of the rule of the statute, with the effect of such law this court has nothing to do. The provisions of the statute are plain, and it was passed by Congress with full power over the subject. In our view the present case is brought within the terms of the law, when given a reasonable construction with a view to effecting its purposes. If it ought to be amended so as to except from its operation alien wives of American citizens, that result can only be legitimately obtained in the exercise of legislative authority.

Judgment affirmed.